A

TREATISE

OF THE

PLEAS OF THE CROWN;

OR,

A SYSTEM OF THE PRINCIPAL MATTERS RELATING TO THAT SUBJECT, DIGESTED UNDER PROPER HEADS.

IN TWO BOOKS.

BY

WILLIAM HAWKINS,

SERJEANT AT LAW.

BOOK THE FIRST.

THE SIXTH EDITION,

In which the Text is carefully collated with the original Work; the marginal References corrected; new References from the modern Reporters added; a Variety of *Manuscript Cases* inserted; and the whole enlarged by an Incorporation of the several Statutes upon Subjects of Criminal Law, to the TWENTY SEVENTH YEAR OF GEORGE THE THIRD. To which an Explanatory Preface is prefixed, and new and copious Indexes are subjoined.

BY

THOMAS LEACH, ESQ.

OF THE MIDDLE TEMPLE,

BARRISTER AT LAW.

DUBLIN:

PRINTED BY *ELIZ. LYNCH*, No. 6, SKINNER-ROW, AND IN THE FOUR COURTS.

M,DCC,LXXXVIII.

BRITISH MUSEUM

TO

THE RIGHT HONOURABLE

SIR JAMES EYRE, KNIGHT,

LORD CHIEF BARON

OF HIS MAJESTY's COURT OF EXCHEQUER.

MY LORD,

THE permiſſion to inſcribe my humble labours to your Lordſhip, is a teſtimony of your Lordſhip's known diſpoſition to encourage even the appearance of uſeful induſtry.

The original Work, as well from the nature of its ſubject, as from its eſtabliſhed merit, ſeems to poſſeſs a natural claim to your Lordſhip's protection. It regards a ſyſtem of law, the moſt ſerious and important in its conſequences to the intereſts of ſociety; the profound knowledge, and firm, but benevolent adminiſtration of which, has eminently diſtinguiſhed your Lordſhip in the eyes of the profeſſion, and of the public.

Your Lordſhip will permit me to join in that reſpect and veneration which is ſo juſtly entertained for your Lordſhip's high judicial character; and particularly to expreſs the honour and gratitude I feel in being allowed to ſubſcribe myſelf,

MY LORD,

Your Lordſhip's

Moſt obedient

and obliged humble ſervant,

THOMAS LEACH.

No. 17, MITRE-COURT BUILDINGS,
INNER TEMPLE, *July* 18, 1787.

jeſty, whoſe wiſdom in conferring his favours has eminently appeared, by the many ſignal benefits the nation has received from thoſe who have the honor to ſerve him. I am with the greateſt reſpect,

MY LORD,

YOUR LORDSHIP's

MOST OBLIGED,

AND MOST HUMBLE SERVANT,

WILLIAM HAWKINS.

TO THE RIGHT HONOURABLE

THOMAS Lord PARKER,

Baron of MACCLESFIELD,

Lord Chief Juſtice of ENGLAND.

MY LORD,

THE following *Treatiſe*, containing that part of the law, which is peculiarly under the adminiſtration of the chief Juſtice of *England*, I preſumed, in regard to the ſubject of it, to think of preſenting it to your Lordſhip, which your goodneſs having been pleaſed to permit, it is with the leſs uneaſineſs that I venture to make it public; for I could not hope to introduce it into the world with greater advantage than under your protection.

This was the real ground of my ambition, to dedicate it to your Lordſhip, and not to give myſelf an opportunity of publiſhing how much I honour thoſe wonderful talents, that have raiſed you to ſo high a ſtation: A private character indeed may be ſet forth to advantage, and many virtues in it be made known by an addreſs of this nature, which might otherwiſe have lain for ever concealed: But your Lordſhip's

is

is public and conſpicuous, and can appear no where with ſo much luſtre as when you ſit in judgment, where that vaſt genius you are bleſſed with, ſhines forth to all the world, adorned with all the improvements that human art can furniſh, and ſupported with the greateſt courage and integrity.

And nothing leſs, my Lord, could give you that command of all the variety of buſineſs which comes before you, and that facility with which you diſpatch it: The moſt intricate points of law, that have for ages lain in confuſion and obſcurity, when they fall under your Lordſhip's conſideration, receive ſuch light, are ſtated and explained with ſuch exact method, and ſuch propriety and beauty of expreſſion, that the moſt polite compoſitions appear not more elegant, nor the moſt demonſtrative more convincing: This, my Lord, is the agreeable part of the exerciſe of your authority, being no violence to that general humanity which you delight to ſhew to all mankind: But the duties of your office require you ſometimes to put on another character and to ſhew the awful face of juſtice, to curb the rage of an unruly people, and to fright them into their duty by the terrors of the law; and 'tis with pleaſure all good men ſee your Lordſhip purſue the prevailing vices of the age with ſuch zeal and indignation, that crimes no longer appear leſs odious for being faſhionable, nor are they more ſecure from puniſhment for being popular.

Theſe, my Lord, are bleſſings which the whole nation ſhares in, and have an influence upon all parts of the civil adminiſtration: But we, who have the honour to attend your Lordſhip at the bar, are in a more particular manner to acknowledge our obligations, for that candour and condeſcenſion with which you treat us: The encouragement you give to our weak endeavours, no leſs engages our affections, than your comprehenſive knowledge and clear and accurate judgment command our reverence and eſteem.

Such goodneſs charms all that approach and feel it; and it was with univerſal joy we ſaw your Lordſhip's firmneſs to the preſent eſtabliſhment, and great ſervices to your country, diſtinguiſhed lately by an acceſſion of honour from his Majeſty,

THE

EDITOR'S PREFACE

TO THE THIRD EDITION.

IN this edition abſtracts of the ſtatutes made ſince the Author wrote relating to the ſubject of this Treatiſe, have been added. Care has alſo been taken to make additional references to the reports publiſhed ſince our Author finiſhed this work, and to Sir Matthew Hale's Hiſtoria Placitorum Coronæ. *Such references as only tend to confirm what is advanced in the text are thrown into the margin; but where new points or differences ſeemed to occur, it was thought proper to place them, together with the abſtracts of the ſtatutes, by way of addition at the end of each book; by which means the learned ſerjeant's work is kept unmixed with any thing of the editor's, and the pages of this edition are made to correſpond with thoſe of the former, ſo that references to our Author from the modern books may be turned to with equal eaſe as before.*

G. L. SCOTT.

THE

EDITOR'S PREFACE

TO THE FOURTH EDITION.

THE ſame method has been obſerved in this edition as by the above G. L. Scott, *in referring not only to the Statutes, but alſo to the later Reports,* viz. Lord Raymond's, *Sir* John Strange's, *and other authors of the beſt authority, brought down to the preſent time.*

THE

THE

EDITOR's PREFACE

TO THE FIFTH EDITION.

THIS *edition is improved with extracts from the late Mr.* J. Foſter's *Crown Law*; *Caſes* Tempore Hardwicke *Ch. J. Maſter* Burrow's *and Mr. Serjeant* Wilſon's *Reports*; *Mr.* J. Blackſton's *Commentaries*; *and from the Statutes, to* 10 Geo. III. *incluſive.*

PREFACE

THE

AUTHOR's PREFACE.

NOTHING is more common than to hear thoſe who have taken only a ſuperficial view of the crown-law, charge it with numberleſs hardſhips and undiſtinguiſhing rigor; whereas thoſe, who have more fully examined it agree, that it wants nothing to make it admired, for clemency and equity, as well as juſtice, but to be underſtood: It is ſo agreeable to reaſon, that even thoſe who ſuffer by it, cannot charge it with injuſtice; ſo adapted to the common good, as to ſuffer no folly to go unpuniſhed, which that requires to be reſtrained; and yet ſo tender of the infirmities of human nature, as never to refuſe an indulgence, where the ſafety of the public will bear it: It gives the Prince no power, but of doing good; and reſtrains the people from no liberty, but of doing evil.

It would be needleſs therefore to ſay any thing of the uſefulneſs of this treatiſe, could I be ſo happy as any way to come up to the deſign of it, which was to vindicate the juſtice and reaſonableneſs of the laws concerning criminal matters, and to reduce them into as clear a method, and explain them in as familiar a manner, as the nature of the thing will bear.

Had any of theſe great men, who formerly have written on this ſubject, gone through the whole law relating to it, all farther attempts of this kind had been unneceſſary. The treatiſe, publiſhed under the name of Sir *Mathew Hale*, is indeed very uſeful, and written in a clear method, and with great learning and judgment; but it is certainly very imperfect in the whole, and ſeems to be only a model or plan of a work of this kind, which is ſaid to have been intended by him.

Sir *Edward Coke*'s third Inſtitute is alſo a treatiſe of great learning, and not unworthy of the hand that produced it; but yet it ſeems by no means a complete work, many conſiderable heads being either wholly omitted in it, or barely touched upon.

The

The treatiſe of Sir *Will. Staundforde* ſeems to be writ with great judgment, but he takes in a very ſmall compaſs, ſcarce mentioning any offences under felonies.

As for the treatiſes of *Lambard*, *Crompton*, *Pulton*, and *Dalton*, they having an eye chiefly to the direction of juſtices of peace; and, treating of the crown-law no farther than as it concerns them, are far from being compleat ſyſtems of it.

Upon the whole, I apprehend that none of the authors before-mentioned were ſo perfect, but that, by reducing all the laws relating to this ſubject, under one general ſcheme, they might generally be underſtood with much leſs difficulty than they have hitherto been. This 'twas induced me to write on this ſubject, and I hope to finiſh the whole in two books, propoſing in this firſt to ſhew the nature of criminal offences; and in the ſecond, the manner of bringing offenders to puniſhment.

THE

PREFACE

TO THE

PRESENT EDITION.

THE high eſtimation in which Mr. SERJEANT HAWKINS' Treatiſe of the PLEAS OF THE CROWN has been univerſally held by the Gentlemen of the profeſſion, renders any attempt either to praiſe or to explain the original work unneceſſary. But as the preſent edition is materially different, from all thoſe which have preceded it, the Editor feels it incumbent on him to deſcribe the general deſign upon which he has endeavoured to raiſe this invaluble production from its former ſtate of imperfection.

This admired Treatiſe of Criminal Law, was firſt publiſhed ſoon after the acceſſion of the preſent Royal Family to the throne. The increaſe of commerce, opulence, and luxury, ſince that period, has introduced a variety of temptations to fraud and rapine, which the legiſlature has been forced to repel, by a multiplicity of occaſional ſtatutes, creating new offences and afflicting additional puniſhments.—Theſe ſtatutes, are now, for the firſt time, incorporated with the original text, digeſted into order, and either arranged under the ſeveral titles to which they reſpectively belong, or erected into ſeparate and independent chapters, in the form of Appendix.—To prevent, however, the reputation of the Author from the danger of being injured by any falſe or injudicious inſertion of the Editor, the new matter is carefully diſtinguiſhed by this mark †, at the opening of each ſection.

But while, during this interval, the legiſlature was thus anxiouſly providing new laws, to meet the various emergencies of

of the times, many of the ſtatutes recited in the former editions of this work, either expired, or were repealed:—Of this dead and uſeleſs matter, the Editor has preſerved ſuch portions only, as are made the ſubjects of the Author's obſervations.—Theſe obſervations, it is true, are the expoſitions of ſtatutes now extinct; but as they peculiarly form a part of the original compoſition, it would have been a violation of his duty as Editor, to have expunged them, and would have deprived the Author of a proportionate ſhare of the veneration and reſpect with which every part of his work has been uniformly and deſervedly honoured. The preſervation of them indeed may prove eſſentially uſeful; for as many of the new ſtatutes frequently purſue, with very little variation, the language of the old enacting clauſes, the ſound conſtructions that have expounded the one, will ſerve either directly, or by analogy, to illuſtrate and explain the other.

The many other parliamentary alterations which the criminal laws of this country have undergone, during the long courſe of near ſeventy years, are alſo ingrafted into the body of the work; and the whole text is carefully collated with the former editions, and with the printed ſtatutes.

The multiplicity of marginal references, with which this work ſo peculiarly abounds, was continued, in the former editions, without intermiſſion, throughout the page: and the eye was, thereby, forced upon a painful reſearch, to find the letters by which their ſeveral applications were intended to be diſcovered. This obſcurity is removed; and they are now placed oppoſite the reſpective ſections to which they refer.—Theſe references have alſo undergone a careful examination; thoſe which were found to burthen the margin without illuſtrating the text are expunged; and new citations extracted from all the modern reporters are inſerted in their ſtead. But this new arrangement of the references has compelled the Editor to abandon the uſual mode of printing the pages of the old editions in the margin. He has, however, prefixed a table to each volume, which exhibits, in one view, where every page in the former editions begins and ends in the preſent work.

To

To the text thus formed and brought down to the preſent ſeſſion of parliament, the determinations of the ſuperior courts, deciſions of the judges upon reſerved caſes, and points ruled by authority upon trials, are added as commentaries, and made to accompany the ſections they are deſigned to expound.

Upon this part of the work the Editor is fearful that his zeal not to omit any illuſtration, which, by poſſibility, might be uſeful, may have betrayed him into the error of inſerting many notes, either not ſufficiently compreſſed or ſuperabundant. He flatters himſelf, however, that as many of them are tranſcribed from MANUSCRIPT CASES, which have never before been printed, their novelty will, in ſome meaſure, compenſate both for their length and multiplicity.

The ſources from which he has derived his collection of manuſcript caſes have been various; but he has inſerted thoſe only which appeared to him to poſſeſs unqueſtionable authenticity. If, upon inſpection, any ſhould be found not perfectly correct, it ſhould be remembered, that deciſions upon reſerved caſes of criminal law, are not, like arguments relating to property, open to the acquiſition of attentive induſtry in WESTMINSTER-HALL, but, being in general, diſcuſſed by the Judges themſelves, and the reſolutions delivered at the ſeveral circuits, on which the caſes aroſe, they are to be acquired only by the favour of the Judges, or by the private friendſhip of thoſe to whom they may have been communicated. Upon this ſubject the Editor, with a mixture of pride and gratitude, acknowledges the great and liberal aſſiſtance he has received from his profeſſional friends, whoſe kindneſs will, perhaps, be found to form the moſt valuable part of the work.

The Author, in his Preface, declares that it was his intention "to reduce all the laws relating to THE PLEAS OF THE "CROWN, under one general ſcheme, that they might be "underſtood with much leſs difficulty than they had been." —To accompliſh this deſign of his Author, the Editor has anxiouſly endeavoured to form the work into one complete and

and entire code of *Engliſh* criminal juriſprudence, as it exiſts at this day, upon the records of the law; but he is fearful that his zeal has led him to attempt a performance too difficult for his exertions to attain, as, upon a review of the ſheets, ſeveral alterations and arrangements have ſuggeſted themſelves to his mind, which he conceives would have rendered the whole more perfect and complete. Confident, however, that no pains have been ſpared, and relying that the work has received a real and uſeful improvement from the alterations and additions which have been made, he reſpectfully ſubmits his labours to the judgment, candour, and protection of a learned and liberal profeſſion.

AN

AN

ANALYSIS

OF THE FIRST BOOK OF

The PLEAS of the CROWN.

ALL perſons whatſoever are liable to be puniſhed as criminal offenders, unleſs they can excuſe themſelves, either,

1 In reſpect of their want of reaſon; or,

2 In reſpect of their ſubjection to the power of others, c. 1.

Offences, conſidered in relation to the perſons againſt whom they are committed, are either,

1 Such as are more immediately againſt God; or,

2 Such as are more immediately againſt man.

Offences more immediately againſt God, are either by common law or by ſtatute.

Thoſe at common law are either capital, or not capital.

The capital are of three kinds.

1 Hereſy, c. 2.

2 Witchcraft, c. 3.

3 Sodomy, c. 4.

Thoſe not capital are either by common law or ſtatute.

Thoſe by common law are of five kinds,

1 Blaſphemies againſt God, c. 5. ſ. 1.

2 Scoffing at the ſcriptures, c. 5. ſ. 2

3 Impoſtures in religion, c. 5. ſ. 3.

4 Open lewdneſs groſly ſcandalous, c. 5. ſ. 4.

5 Seditious words againſt the eſtabliſhed religion, c. 5. ſ. 6.

Thoſe by ſtatute are two-fold,

1 Such as are againſt religion in general.

2 Such as are againſt the eſtabliſhed church.

Thoſe againſt religion in general are of four kinds,

1 Profanations of the Lord's day, c. 6. ſ. 1, 2, 3.

2 Profane ſwearing and curſing, c. 6. ſ. 4.

3 Drunkenneſs, c. 6. ſ. 5.

4 Reviling the Lord's Supper, c. 6. ſ. 6.

Thoſe againſt the eſtabliſhed church are three-fold.

1 Such as concern all perſons in general.

2 Such as more immediately relate to thoſe of the popiſh religion.

3 Such as more immediately regard proteſtant diſſenters, c. 16.

Thoſe which concern all perſons in general, are either.

1 Againſt the common prayer, c. 7. or,

2 In accepting or holding an office without due conformity to the church, c. 8. or,

3 In teaching ſchool without conforming to the church, c. 9. or,
4 In not coming to church. c. 10, 11.

Thoſe relating more immediately to perſons of the popiſh religion, are of four kinds.

1 Popiſh recuſancy, c. 12.
2 The offence of ſaying or hearing of maſs, or other popiſh ſervice, c. 13.
3 The offence of not making a declaration againſt popery, c. 14.
4 The offence of promoting or encouraging the popiſh religion; either,
1 In giving or receiving popiſh education, c. 15. ſ. 1, 2, 3.
2 In profeſſing the popiſh religion, c. 15. from ſ. 4. to ſ. 15.
3 In buying or ſelling popiſh books, c. 15. ſ. 15.

Offences more immediately againſt man, are either more immediately againſt the king, or more immediately againſt the ſubject.

Thoſe more particularly againſt the king, are either capital or not capital.

The capital are either,

1 High treaſon; or,
2 Felonies.

High treaſon is either,

1 Such as is within 25 E. 3. and other ſtatutes grounded upon it, and explaining it; or,
2 Such as depends upon ſubſequent ſtatutes.

Of treaſon within 25 Ed. 3. there are four ſpecies.

1 That which immmediately concerns the king, his wife or children, c. 17. ſ. 3. 4, &c.
2 That which concerns his office in the adminiſtration of juſtice, c. 17. ſ. 46.
3 That which concerns his ſeal, c. 17. ſ. 48.
4 That which concerns his coin, c. 17. ſ. 54.

Of high treaſon depending on ſubſequent ſtatutes, there are three ſpecies.

1 Offences in upholding or favouring the power of the pope.
2 Offences againſt the proteſtant ſucceſſion, c. 17. ſ. 85.
3 Offences in liſting men without the king's licence, c. 17. ſ. 86.

Of offences in upholding or favouring the power of the pope, there are five ſpecies.

1 Extolling the pope's power, c. 17. ſ. 72.
2 Putting in ure popiſh bulls, c. 17. ſ. 75.
3 Perverting others, or being perverted to popery, c. 17. ſ. 76.
4 Receiving popiſh orders or education in popiſh ſeminaries, and not ſubmitting, &c. c. 17. ſ. 79.
5 Refuſing a ſecond tender of the oaths, c. 17. ſ. 84.

Felonies more immediately againſt the king, are of five kinds,

1 Offences relating to the coin or bullion.
2 Offences againſt the king's council, c. 18. ſ. 8.
3 The offence of paſſing beyond ſea, to ſerve a foreign prince, c. 18. ſ. 10.
4. The offence of embezzling the king's armour, c. 18. ſ. 12.
5 The offence of relieving a popiſh prieſt. c. 18. ſ. 14.

Of felony relating to the coin or bullion, there are three ſpecies.

1 The offence of debaſing it, c. 18. ſ. 1.
2 The offence of unlawfully diminiſhing it, c. 18 ſ. 2.
3 The offence of endeavouring by extraordinary means to increaſe it, c. 18. ſ. 7.

Of offences more immediately againſt the king, not capital, there are two kinds.

1 *Præmunire.*
2 Miſpriſion.

Offences coming under the notion of *præmunire*, are either,

1 Againſt

1 Againſt the prerogative of the crown; or,
2 Againſt the authority of the king and parliament, c. 19. ſ. 44.

Of offences of this kind againſt the prerogative of the crown, there are nine ſpecies,

1 Making uſe of papal bulls, c. 19. ſ. 12.
2 Derogating from the king's common law courts, c. 19. ſ. 14.
3 Appealing to Rome from any of the king's courts, c. 19. ſ. 20.
4 Exerciſing the juriſdiction of a ſuffragan, without the appointment of the biſhop of the dioceſe, c. 19. ſ 21.
5 Refuſing to elect or conſecrate the perſon nominated by a king to a biſhoprick, c 19. ſ. 22.
6 Maintaining the pope's power, c. 19. ſ. 23.
7 Bringing in *Agnus Dei*, c. 19. ſ. 24.
8 Contributing to the maintenance of a popiſh ſeminary, c. 19. ſ. 26.
9 Refuſing the oaths, c. 19. ſ. 27.

Miſpriſions more immediately againſt the king are either negative or poſitive.

The negative is commonly called miſpriſion of treaſon, c. 20.

Poſitive miſpriſions of this kind either amount to miſpriſion of treaſon, or do not.

Of ſuch miſpriſions, amounting to miſpriſions of treaſon, there is only one ſpecies; forging foreign coin not current here, c. 20. ſ. 7.

Of ſuch miſpriſions not amounting to miſpriſion of treaſon, there are four kinds.

1 Contempts againſt the king's palace or courts of juſtice, c. 21.
2 Contempts againſt his prerogative, c. 22.
3 Contempts againſt his perſon or government, c. 23.
4 Contempts againſt his title, c 24.

Of contempts againſt the king's prerogative, there are three ſpecies.

1 Refuſing to aſſiſt him, for the good of the public, c. 22. ſ. 2.
2 Preferring the intereſts of a foreign prince to that of our own, c. 22. ſ. 3.
3 Diſobeying the king's lawful commands or prohibition, c. 22. ſ. 4.

Of contempts againſt the king's perſon or government, there are ſix kinds.

1 Charging the government with oppreſſion or weak adminiſtration, c. 23. ſ. 2.
2 Doing an act which impliedly encourages rebellion, c. 23. ſ. 4.
3 Endeavouring to frighten the king into a change of his meaſures, c. 23. ſ. 4.
4 Spreading falſe rumours concerning the king's intentions, c. 23. ſ. 5.
5 Charging him with a breach of his coronation oath, c. 23. ſ. 6.
6 Speaking contemptuouſly of him; c. 23. ſ. 7.

Of contempts againſt the king's title, there are two kinds,

1 Denying his title, c. 24. ſ. 1.
2 Refuſing to take the oaths required by law for the ſupport of his government.

Of offences in refuſing to take ſuch oaths, there are two kinds,

1 The offence of refuſing the oath required by common law, c. 24. ſ. 3.
2 The offence of refuſing the oaths required by ſtatute.

Of offences in refuſing the oaths required by ſtatute, there are two kinds,

1 The offence of refuſing the oaths of allegiance and ſupremacy, c. 24. ſ. 4
2 The offence of refuſing the oath of abjuration, c. 24. ſ. 6.

Offences more immediately againſt the ſubject, are either capital or not capital.

The capital are either by the common law or by ſtatute.

Thoſe by the common law are committed either.

1 Againſt the life of a man; or,
2 Againſt his goods; or,
3 Againſt his habitation; or,
4 Againſt public juſtice.

Thoſe againſt the life of a man, are either,
1 Caſual, not being occaſioned by the default or procurement of any man, c. 26. or,
2 Such as come under the notion of homicide, being occaſioned by a man, c. 26. ſ. 2.

Of homicides there are two kinds,
1 Such as is committed againſt a man's own life, c. 27.
2 Such as is committed againſt the life of another.

Of homicide againſt the life of another, there be two kinds,
1 Such as amounts not to felony.
2 Such as amounts to felony.

Of ſuch homicide not amounting to felony, there are two kinds,
1 Juſtifiable.
2 Excuſable.

Juſtifiable homicide is either of a public or a private nature.

That of a public nature is of two kinds,
1 Such as happens in the due execution, c. 28. ſ. 4. and,
2 Such as happens in the due advancement of public juſtice.

Of the latter there are two kinds,
1 Such as happens in criminal, c. 28. ſ. 11. and
2 Such as happens in civil cauſes, c. 28. ſ. 17.

Of juſtifiable homicide of a private nature, there are two kinds,
1 Such as happens in killing a wrong-doer, c. 28. ſ. 21.
2 Such as happens in killing an innocent perſon, c. 28. ſ. 25.

Of excuſable homicide there are two kinds.
1 Homicide *per infortunium*, c. 29. ſ. 1.
2 Homicide *ſe defendendo*, c. 29. ſ. 12.

Homicide againſt the life of another, amounting to felony, is either with or without malice.

That which is without malice is called man ſlaughter or chance medley, c. 20.

Of ſuch homicide with malice there are two kinds,
1 Murder, c. 31.
2 Petit treaſon, c. 32.

Of murder there are two kinds,
1 Such as is done with expreſs malice.
2 Such as is done with implied malice.

Of murder done with expreſs malice, there are three kinds,
1 Such as happens in duelling, c. 31. ſ. 21.
2 Such as happens in killing another without any provocation; or but upon a ſlight one, c. 31. ſ. 32.
3 Such as happens in killing one whom the perſon killing intended to hurt in a leſs degree, c. 31. ſ. 28.

Murder done with implied malice generally happens in the following inſtances:
1 Where the principal intention is to commit another felony, c. 31. ſ. 41.
2 Where the principal deſign is to commit a bare breach of the peace, not intended againſt the perſon of him who happens to be ſlain, c. 31. ſ. 46.
3 Where the chief motive is to aſſiſt a third perſon, c. 31. ſ. 49.
4 Where the direct deſign is to eſcape from an arreſt, c. 31. ſ. 55.
5 Where the principal purpoſe is to uſurp an illegal authority, c. 31. ſ. 59.
6 Where no miſchief is intended at all, c. 31. ſ. 61.

Of petit treaſon there are three kinds, c. 32.
1 Where a ſervant kills his maſter.
2 Where a wife kills her huſband.
3 Where an eccleſiaſtical perſon kills his prelate.

Of

Of capital offences at common law againſt the goods of another, there are two kinds.

1 Simple larceny.
2 Mix'd larceny.

Of ſimple larceny there are alſo two kinds.

1 Grand larceny, c. 32. ſ. 1.
2 Petit larceny, c. 32. ſ. 31.

Mix'd larceny is either from the perſon of a man, or from his houſe, c. 36.

Of mixed larceny from the perſon, there are two kinds.

1 Robbery, c. 34.
2 Larceny from the perſon, c. 35.

Alſo there is another offence of this nature called piracy, c. 37.

Capital offences at common law againſt the habitation of a man, are of two kinds,

1 Burglary, c. 38.
2 Arſon, c. 39.

Offences more immediately againſt the ſubject, made capital by ſtatute, are ſuch as are committed,

1 Againſt women, (and of theſe there are two kinds,
  1 Rape.
  2 Forcible marriage.)
2 Againſt the rights of marriage, c. 43.
3 Againſt the members of a man's body, c. 44.
4 Againſt records, c. 45.
5 Againſt cattle, c. 56.
6 By purveyors, c 47.
7 By ſoldiers and mariners, c. 48.
8 By hunters, c. 49.
9 By deſtroyers of fences, turnpike roads and bridges, c. 50.
10 By gaolers, c. 51.
11 By tranſporters of ſheep or wool, c. 52.
12 By ſervants, c. 53.
13 By Egyptians, c. 54.
14 By cutters of pow-dike, c. 55.
15 By treſpaſſers on the borders and rioters, c. 56.
16 By bankrupts, c. 57.
17 By counterfeiters of bank notes, exchequer bills, ſtamps, South-ſea bonds, lottery orders, &c. c. 58.
18 Againſt property adherent to the freehold. App. 1.
19 Againſt ſhips in diſtreſs, &c. App. 2.
20 By taking fiſh, &c. App. 3.
21 By malicious incendiaries. App. 4.
22 By ſhooting at another, and threatening letters. App. 5.
23 By ſmugglers. App. 6.
24 By buying and receiving ſtolen goods. App. 7.
25 By advertiſing a reward. App. 8.
26 By deſtroyers of garments, hop-binds, and mine engines. App. 9.
27 By deſtroying of looms, &c. App. 10.
28 By not performing quarantine. App. 11.
29 By hindering the exportation of corn. App. 12.
30 By returning from tranſportation. App. 13.
31 By aſſaulting with intent to rob. App. 14.

Offences more immediately againſt the ſubject not capital, are of two kinds,

1 Miſpriſion of felony, c. 59.
2 Other inferior offences.

Such inferior offences are of two kinds,

1 Such as amount to an actual diſturbance of the peace.
2 Such as do not amount to ſuch a diſturbance.

For the prevention of the former of theſe kinds of offences, the law has provided two remedies,

1 By ſurety for keeping the peace, c. 60.
2 By ſurety for the good behaviour, c. 61.

Of the above-mentioned offences amounting to the actual diſturbance of the peace, there are two kinds.

1 Such as may be committed by one or two perſons.
2 Such as require a greater number.

Of thoſe which may be committed by one or two perſons, there are four kinds,

1 Aſſaults, c. 62. ſ. 1.
2 Batteries, c. 62. ſ. 2.

3 Affrays,

3 Affrays, c. 63.
4 Forcible entries and detainers, c. 64.

Of thoſe which require a greater number of perſons there are three kinds,
1 Riots, c. 65. ſ. 1.
2 Routs, c. 65. ſ. 8.
3 Unlawful aſſemblies, c. 65. ſ. 9.

Of ſuch inferior offences not amounting to an actual diſturbance of the peace, there are two kinds,
1 Such as are committed by officers.
2 Such as are committed by common perſons, without any relation to an office.

Of offences of this nature, committed by officers, there are three ſpecies.
1 Neglect or breach of duty, c. 66.
2 Bribery, c. 67.
3 Extortion, c. 68.

Of offences of this nature, committed by private perſons, without any relation to any office, the are two kinds.
1 Such as are infamous and groſsly ſcandalous, proceeding from principles of downright diſhoneſty, malice, or faction.
2 Such as are of an inferior nature, and neither infamous nor groſsly ſcandalous.

Of offences of the firſt ſort, there are ſix ſpecies,
1 Perjury, c. 69.
2 Forgery, c. 70.
3 Cheats, c. 71.
4 Conſpiracy, c. 72.
5 Libels, c. 73.
6 Keeping of a bawdy-houſe, and other unlawful place, c. 74.

Of offences of the latter ſort, there are two kinds,
1 Such as more immediately affect the public.
2 Such as more immediately affect the intereſts of particular perſons.

Of thoſe which more immediately affect the public, there are four kinds,
1 Common nuiſances, c. 75.
2 Monopolies, c. 79.
3 Foreſtalling, engroſſing, and regrating, c. 80.
Of victuals, app.
4 Barratry, c. 81.

The moſt remarkable kinds of common nuiſances are,
1 Such as relate to highways and turnpike roads.
2 Such as relate to public houſes, c. 78.

Thoſe which relate to highways come under a twofold conſideration.
1 As they relate to highways and turnpike roads in general, c. 76.
2 As they relate to bridges in particular, c. 77.

Of the offences above-mentioned more immediately affecting the intereſts of particular perſons there are three kinds.
1 Uſury, c. 82.
2 Maintenance.
3 Buying or ſelling a pretended title, c. 86.

Maintenance is two-fold.
1 *Ruralis*, c. 65. ſ. 2.
2 *Curialis*, c. 82. ſ. 3.

Of maintenance *curialis* there are three ſpecies.
1 General maintenance, c. 83. ſ. 4.
2 Champerty, c. 84.
3 Embracery, c. 85.

Of ſeducing artificers.
Of acting plays without licence.
Of embezzling naval ſtores.
Of exerciſing a trade without ſerving apprenticeſhip.
Of granting fraudulent permits.
Of ſurcharging boats.
Of vagrants.

AN

ACCOUNT

OF THE

AUTHORS REFERRED TO IN THIS WORK.

A.

A Leyn	*A Leyn's Reports.*
And.	*Anderſon's Reports, firſt and ſecond Part.*
Aſſ.	*The Book of Aſſizes.*
Atk.	*Atkyn's Reports.*

B.

B. R. H.	*Caſes in the time of Lord Hardwicke.*
Bac. Abr.	*Bacon's Abridgment.*
Bar. K. B.	*Barnardiſton's Reports in the King's Bench.*
Barr.	*Barrington on the Statutes.*
Barrow	*Barrow's Supremacy.*
Benloe	*Benloe's Reports.*
Brac. Bracton	*Bracton, De legibus & conſuetudinibus Angliæ.*
Bridg.	*Bridgman's Reports.*
Bro.	*Brook's Abridgment.*
Bul.	*Bulſtrode's Reports.*
Burr.	*Sir James Burrow's Reports.*
Brown	*Brown's Caſes in Chancery.*
Bull. N. P.	*Introduction to the Law of Niſi Prius.*

C.

Carth.	*Carthew's Reports.*
Caſ. in Parl.	*Sir Bartholomew Shower's Caſes in Parliament.*
Caw. Cawley	*Cowley's Law againſt Recuſants.*
Comm.	*Blackſtone's Commentaries.*
Com. Dig.	*Comyn's Digeſt.*
Co.	*Sir Edward Coke's Reports.*
Co. Lit.	*Sir Edward Coke's Commentary upon Littleton.*
Comb.	*Comberbach's Reports.*
C. Eliz.	*Croke's Reports for the reign of Queen Elizabeth.*
C. Jac.	*Croke's Reports for the reign of King James the firſt.*
C. Car.	*Croke's Reports for the reign of King Charles the firſt.*
Crom.	*Crompton's Office of a Juſtice of Peace, printed in the Year 1606.*
Cowp.	*Cowper's Reports.*

Daliſ.

D.

Daliſ.	*Daliſon's Reports.*
Dalt.	*Dalton's Country Juſtices, printed in the year 1655.*
Danv. Abr.	*D'Anvers's Abridgment.*
Dav. Davis	*Davis's Reports.*
Dy. Dyer	*Dyer's Reports.*
Dougl.	*Douglas's Reports.*
D. & E. Durnf. & Eaſt	*The Term Reports by Charles Durnford and Edward Hyde Eaſt, Eſquires.*

F.

Far.	*Farreſley's Reports.*
F. N. B.	*Fitzherbert's Natura Brevium.*
Fitz.	*Fitzherbert's Abridgment.*
Fitzg.	*Fitzgibbon's Reports.*
Flet.	*Fleta.*
Foſ.	*Foſter's Reports and Diſcourſes upon Crown Law.*

G.

Gibſ. Gibſon	*Gibſon's Codex Juris Eccleſiaſtici Anglicani.*
Godb.	*Godbolt's Reports.*

H.

1 Hale 2 Hale	*Hale's Hiſtoria Placitorum Coronæ,*
Hard.	*Hardreſs Reports.*
Hetl.	*Hetley's Reports.*
Hob.	*Hobart's Reports.*
Hutt.	*Hutton's Reports.*

J.

1 Jones	*Sir William Jones's Reports.*
2 Jones	*Sir Thomas Jones's Reports.*
1 Inſt.	*Coke upon Littleton.*
2 Inſt.	*The ſecond Part of Coke's Inſtitutes.*
3 Inſt.	*The third Part of Inſtitutes.*
4 Inſt.	*The fourth Part of Coke's Inſtitutes.*

K.

Keb.	*Keble's Reports.*
Keil.	*Keilway's Reports.*
Keyl.	*Kelyng's Reports.*
Kitch.	*Kitchin, of Courts Leet and Baron.*

Lam.

L.

Lam. Lamb.	*Lambard's Office of Juſtices of Peace, printed in the year* 1614.
Lane	*Lane's Reports.*
Latch.	*Latch's Reports.*
Leon.	*Leonard's Reports.*
Lev.	*Levinz's Reports.*
Litt.	*Littleton's Reports.*
Ld. Raym.	*Lord Raymond's Reports.*

M.

Mar.	*March's Reports.*
Mod.	*Modern Reports.*
Mo.	*Moore's Reports.*
M S.	*Manuſcript Caſes never before publiſhed.*

N.

New. Abr.	*New Abridgment of the Law.*
Noy.	*Noy's Reports.*

O.

Ow. Owen.	*Owen's Reports.*

P.

Pal. Palm.	*Palmer's Reports.*
Parſons	*Parſon's againſt Sir Edward Coke's fifth Report.*
P. Will.	*Peere William's Reports.*
Pl. Com.	*Plowden's Commentaries.*
Po. Poph.	*Popham's Reports.*
Prin. P. L.	*Eden's Principles of Penal Law.*
Pult.	*Pulton, De Pace Regis & Regni.*

R.

Ray. Raym.	*Raymond's Reports.*
Reg.	*Regiſter.*
R. A. R. Abr.	*Rolle's Abridgment.*
Rol.	*Roll's Reports.*
Ruſh. Coll.	*Ruſhworth's Collections.*

Salk.

S.

Salk.	*Salkeld's Reports.*
Saun.	*Saunder's Reports.*
Sav.	*Savil's Reports.*
Say.	*Sayer's Reports.*
Seld. Jan. Ang.	*Jani Anglorum facies altera by Mr. Selden, tranſlated into Engliſh by Mr. Redman Weſtcot, and printed in the Year 1682.*
Seld. Epin.	*England's Epinomis by Mr. Selden, printed in the Year 1683.*
Show.	*Shower's Reports.*
Sid.	*Siderfin's Reports.*
Skin.	*Skinner's Reports.*
St. Tr.	*State Trials.*
Str.	*Strange's Reports.*
Sum.	*Hales's Summary of the Pleas of the Crown.*
S. P. C.	*Staunford's Pleas of the Crown.*

T.

Thelo.	*Theloal's Digeſt of Writs.*
Trem.	*Tremaine's Pleas of the Crown.*
Term Rep.	*The Term Reports.*

V.

Vaugh.	*Vaughan's Reports.*
Vent.	*Ventris's Reports.*

W.

Watſ. Watſon.	*Watſon's Clergyman's Law, Folio Edition.*
Win Winch	*Winch's Reports.*
Wilſ.	*Wilſon's Reports.*
Wood's Inſ.	*Wood's new Inſtitute of the Imperial or Civil Law.*
Wood	*Wood's Inſtitute of Common Law.*

Y.

Year Books.	
Yel.	*Yelverton's Reports.*

A REFER-

A

REFERENCE

TO THE

Pages in the Firſt Volume of the former Edition.

Page in the old edition.	Pages and Sections in the preſent Edition.					Page in the old edition.	Pages and Sections in the preſent Edition.				
	beg^{n}.	Pa	Sect.	ends	Pa	Sect.		beg^{n}.	Page	Sect.	ends	Page	Sect.
1	—	1	—	—	1	1	35	—	50	4	—	52	12
2	—	1	1	—	4	13	36	—	52	12	—	53	22
3	—	4	13	—	6	3	37	—	53	22	—	55	27
4	—	6	3	—	7	11	38	—	55	27	—	57	35
5	—	7	11	—	9	—	39	—	57	35	—	59	—
6	—	9	—	—	10	2	40	—	59	—	—	60	44
7	—	10	2	—	12	—	41	—	60	44	—	62	—
8	—	12	—	—	14	2	42	—	62	—	—	65	65
9	—	14	3	—	15	1	43	—	65	65	—	67	—
10	—	15	1	—	17	5	44	—	67	—	—	68	79
11	—	17	5	—	19	—	45	—	68	79	—	69	86
12	—	19	—	—	19	1	46	—	69	86	—	71	3
13	—	19	1	—	20	9	47	—	71	3	—	73	8
14	—	20	9	—	22	17	48	—	73	8	—	76	c. 19
15	—	22	17	—	23	20	49	—	76	c. 19	—	77	f. 7
16	—	23	20	—	24	7	50	—	77	f. 7	—	79	13
17	—	24	27	—	26	—	51	—	79	13	—	80	20
18	—	26	—	—	27	40	52	—	80	20	—	82	28
19	—	27	40	—	28	44	53	—	82	28	—	83	38
20	—	28	44	—	30	53	54	—	83	38	—	85	—
21	—	30	53	—	31	c. 11	55	—	85	—	—	86	c. 20
22	—	31	c. 11	—	32	f. 1	56	—	86	c. 20	—	87	27
23	—	32	f. 1	—	33	7	57	—	87	21	—	89	f. 8
24	—	33	7	—	35	—	58	—	89	f. 8	—	90	15
25	—	35	—	—	36	18	59	—	90	15	—	92	5
26	—	36	18	—	38	—	60	—	92	5	—	93	c. 24
27	—	38	—	—	39	2	61	—	93	c. 24	—	94	f. 2
28	—	39	2	—	40	3	62	—	94	f. 2	—	96	—
29	—	40	3	—	42	c. 15	63	—	95	4	—	97	—
30	—	42	c. 15	—	43	f. 3	64	—	97	—	—	99	—
31	—	43	f. 3	—	45	—	65	—	99	—	—	100	—
32	—	45	—	—	47	—	66	—	100	—	—	101	7
33	—	47	—	—	49	c. 17	67	—	101	7	—	102	4
34	—	49	c. 17	—	50	f. 4	68	—	102	4	—	104	13

Pages in the old edit.		Pages and Sections in the present Edition.				
	beg.s	Page	Sect.	ends	Page	Sect.
69		104	13		105	4
70		105	4		106	12
71		106	22		108	22
72		108	22		109	25
73		109	25		112	6
74		112	6		113	14
75		113	14		114	23
76		114	23		115	4
77		115	4		116	c. 31
78		116	c. 31		118	f. 6
79		118	f. 6		121	14
80		121	14		122	22
81		122	22		124	29
82		124	29		125	37
83		125	37		126	42
84		126	42		128	47
85		128	47		129	54
86		129	54		131	62
87		131	62		132	3
88		132	3		134	—
89		134	—		135	5
90		135	5		137	10
91		137	10		138	12
92		138	12		141	19
93		141	19		144	25
94		144	25		145	31
95		145	31		148	—
96		148	—		149	10
97		149	10		151	—
98		151	—		153	—
99		153	—		154	10
100		154	10		156	—
101		156	—		160	3
102		160	3		161	6
103		161	6		163	12
104		163	12		164	18
105		164	18		166	3
106		166	3		168	1
107		168	1		169	c. 41
108		169	c. 41		170	f. 7
109		170	f. 7		170	5
110		172	5		174	3
111		174	3		175	2
112		175	2		177	4
113		177	4		179	11
114		179	11		181	2
115		181	2		182	6
116		182	6		183	3
117		183	3		185	10
118		185	10		194	c. 51

Pages in the old edit.		Pages and Sections in the present Edition.				
	beg.s	Page	Sect	ends	Page	Sect.
119		194	c. 51		197	c. 53
120		197	53		200	—
121		200	—		201	—
122		201	—		203	—
123		203	—		205	f. 4
124		205	4		208	—
125		251	—		252	c. 60
226		252	c. 60		253	f. 4
127		253	f. 4		255	10
128		255	10		257	15
129		257	15		258	19
130		258	19		259	24
131		259	24		261	—
132		261	—		262	5
133		262	5		263	2
134		263	2		265	2
135		265	2		267	7
136		267	7		268	13
137		268	13		269	19
138		269	19		271	24
139		271	24		272	29
140		272	29		274	2
141		274	2		275	8
142		275	8		277	12
143		277	11		278	17
144		278	17		280	—
145		280	—		281	—
146		281	—		282	33
147		282	33		283	38
148		283	38		285	—
149		285	—		286	—
150		286	—		287	45
151		287	45		289	50
152		289	50		290	—
453		290	—		291	57
154		291	57		292	63
155		292	63		293	—
156		293	—		295	4
157		295	4		296	7
158		296	7		297	11
159		297	11		299	15
160		299	16		300	9
161		300	19		302	—
162		302	—		303	30
163		303	30		304	35
164		304	35		306	40
165		306	40		307	48
166		307	48		308	57
167		308	57		311	—
168		311	—		312	3

Pages in the old edit.	Pages and Sections in the present Edition.					
	beg^{s}.	Page	Sect.	ends	Page	Sect.
169	—	312	3	—	314	7
170	—	314		—	31[illegible]	—
171	—	317	—	—	319	—
172	—	319	—	—	320	—
173	—	320	—	—	321	4
174	—	321	4	—	322	6
175	—	322	6	—	324	—
176	—	324	—	—	325	9
177	—	325	9	—	327	14
178	—	327	14	—	329	18
179	—	329	18	—	330	20
180	—	330	20	—	332	—
181	—	332	—	—	335	—
182	—	335	—	—	337	—
183	—	337	—	—	338	—
184	—	338	—	—	339	12
185	—	339	12	—	340	16
186	—	340	16	—	342	23
187	—	342	23	—	343	2
188	—	343	2	—	346	—
189	—	346	—	—	347	—
190	—	347	—	—	348	3
191	—	348	3	—	350	6
192	—	350	6	—	351	9
193	—	351	9	—	353	—
194	—	353	—	—	355	—
195	—	355	—	—	356	12
196	—	356	12	—	360	—
197	—	360	—	—	361	—
198	—	361	—	—	362	8
199	—	362	8	—	365	13
200	—	365	13	—	366	1
201	—	366	1	—	368	—
202	—	368	—	—	369	9
203	—	369	8	—	372	—
204	—	372	—	—	378	19
205	—	378	19	—	380	23
206	—	380	23	—	382	27
207	—	382	27	—	386	31
208	—	386	31	—	394	—
209	—	394	—	—	395	—
210	—	395	—	—	397	40
211	—	397	40	—	403	46
212	—	403	46	—	405	52
213	—	405	52	—	407	57
214	—	407	57	—	409	64
215	—	409	64	—	412	66
216	—	412	66	—	414	70
217	—	414	70	—	416	70

Pages in the old edit.	Pages and Sections in the present Edition.					
	beg^{s}.	Page	Sect.	ends	Page	Sect.
218	—	416	74	—	419	82
219	—	419	82	—	422	89
220	—	422	89	—	443	1
221	—	443	1	—	444	6
222	—	444	6	—	446	—
223	—	446	—	—	448	—
224	—	448	—	—	449	18
225	—	449	18	—	452	5
226	—	452	5	—	454	10
227	—	454	10	—	457	16
228	—	457	16	—	458	18
229	—	458	18	—	459	21
230	—	459	21	—	470	1
231	—	470	1	—	472	—
232	—	472	—	—	473	14
233	—	473	14	—	475	22
234	—	475	22	—	479	3
235	—	479	3	—	481	—
236	—	481	—	—	482	13
237	—	482	13	—	484	20
238	—	484	20	—	485	—
239	—	485	—	—	525	—
240	—	New Matter.				
241	—					
242	—					
243	—	525	—	—	525	8
244	—	525	8	—	427	—
245	—	527	—	—	528	8
246	—	528	8	—	530	13
247	—	530	13	—	532	19
24	—	532	19	—	535	—
249	—	535	—	—	536	6
250	—	536	6	—	538	12
251	—	538	12	—	539	16
252	—	539	16	—	540	—
253	—	540	—	—	541	26
254	—	541	26	—	543	—
255	—	543	—	—	544	40
256	—	544	40	—	545	3
257	—	545	3	—	547	14
258	—	547	14	—	548	c. 85
259	—	548	—	—	549	f. 5
260	—	549	5	—	551	11
261	—	551	11	—	552	21
262	—	552	21	—	553	2
263	—	553	2	—	555	6
264	—	555	6	—	556	15
265	—	556	15	—	557	17
266	—	557	17	—	558	c. 87

A TREATISE OF THE PLEAS OF THE CROWN.

BOOK THE FIRST.

CHAPTER THE FIRST.

OF THE PERSONS WHO MAY BE GUILTY OF CRIMINAL OFFENCES.

THE guilt of offending againſt any law whatſoever, neceſſarily ſuppoſing a wilful diſobedience, can never juſtly be imputed to thoſe who are either incapable of underſtanding it, or of conforming themſelves to it. Therefore, before I come to the ſeveral kinds of offences, I ſhall ſhew what degrees of diſcretion and freedom are required in the commiſſion of them. For the better underſtanding whereof, I ſhall conſider what offenders are excuſable.—Firſt, in reſpect of their want of reaſon.—Secondly, in reſpect of their ſubjection to the power of others. 1 Hale 15. 4 Comm. 21. Puff. b. 8. c. 3.

Sect. 1. As to the Firſt point it is to be obſerved, that thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as (1.) infants under the age of diſcretion, B. Cor. 61. 170. Pult. 125, 126, 129.

Sum. 10. 28, 43. 3 Inſt. 4. Dalt. c. 147. 1 Hale 16. 29. 515, Co. Lit. 247. 4 Co. 124. Hob. 224. 8 St. Tr. 322.

(1) On the attainment of fourteen years of age, the criminal actions of infants are ſubject to the ſame modes of conſtruction as thoſe of the reſt of ſociety; for the law preſumes the human mind has acquired, at this period, a compleat ſenſe of right and wrong. Dr. & St. c. 26. Co. Lit. 72. 171. 247. Dalt. 476. 505. During the interval between the age of fourteen years and that of ſeven, the mind is *prima facie* preſumed to be unacquainted with guilt. And theſe preſumptions entertained in favour of innocence, accumulate in an inverſe proportion with the decreaſe and tenderneſs of the offender's years. 1 Hale 25. 27. From this ſuppoſed imbecillity of mind, the protective humanity of the law will not, without anxious circumſpection, permit an infant to be convicted on his own confeſſion. C. Jac. 466. 1 Hale 24. Foſ. 70. Yet if it appeared by ſtrong and pregnant evidence and circumſtances that he was perfectly conſcious of the nature and malignity of the crime, the *verdict of a jury* may find him guilty, and judgment of death may be given againſt him. 1 Hale 20. 25. 434. B. Cor. 133. 4 Comm. 23. Foſ. 71. O. B. 1784. p 971. For *malitia ſupplet ætatem*; and the capacity of contracting guilt is meaſured more by the apparent ſtrength of the offender's underſtanding than by years and days. B. Cor. 74. 4 Comm. 23. But within the age of ſeven years an infant cannot be puniſhed for any capital offence, whatever circumſtances of a miſchievous diſcretion may appear; for *ex preſumptione juris*, he cannot have diſcretion; and againſt this preſumption no averment ſhall be admitted. Mirr. 3. 4. ſ. 6. Plowd. 19. 1 Hale 20. Foſ. 349. 4 Comm. 23. Cowp. 222, 223. Therefore if a *child* under this age ſteal the goods or fire the houſe of another, *he* cannot be puniſhed for either the larceny or the arſon. 1 Hale 19. 514. Foſ. 113. 349. But there is an inſtance of a pardon granted to an infant for homicide committed within the age of ſeven years. Regiſt. 309.

ideots and lunaticks, (2) are not punishable by any criminal prosecution whatsoever.

(2) Ideocy is a defect of understanding, from the moment of birth; Co. Litt. 247. F. N. B. 530. 1 Comm. 304. a person therefore, *born* deaf and dumb is *prima facie* within this definition. B. Cor. 217. 1 Hale 34.—Lunacy is a partial derangement of the intellectual faculties, the senses returning at uncertain intervals; the offender therefore is only protected from punishment for acts done during the prevalence of his disorder. 1 Hale 31. 4 Comm. 24.—Madness is a total alienation of the mind. 1 Hale 30. 4 Co. 124. These defects, whether permanent or temporary, must be unequivocal and plain, not an idle frantic humour, or unaccountable mode of action, but an absolute dispossession of the free and natural agency of the human mind. 8 St. Tr. 322. 1 Hale c. 4. O. B. 1784. p. 257.

2 Roll. 324. F. Cor. 351. Reg. 309. Sum. 43. 3 Inst. 6. Co. Lit. 247. 4 Co. 124. 1 Hale 36, 37.

Sect. 2. Indeed it was anciently holden, in respect of that high regard which the law has for the safety of the king's person, that a madman might be punished as a traitor (3) for killing or offering to kill the king; but this is contradicted by the later opinions.

4 Comm. 25——(3) See 33 H. 8. c. 20. repealed by 1 & 2 P. & M. c. 10.

26 Ass. 47. Say. 57. Sum. 10. 1 And. 107. 109. 3 Inst. 4. 6. 1 Hale 34, 35.

Sect. 3. And it seems agreed at this day, that if one, who has committed a capital offence, become *non compos* before conviction, he shall not be arraigned; and if after conviction, that he shall not be executed.

4 St. Tr. 205. 8 St. Tr. 285. 4 Comm. 24, 25. 388.

Pult. 6. 22 Ass. 56. (The 12 Anne, c. 23, upon this subject which was recited in the former edition is repealed by 13 Geo. 2. c. 14.)

Sect. 4. But by 17 *Geo.* 2. c. 5. s. 20. (which seems agreeable to the ancient common law) it is enacted, "That it shall "and may be lawful for any two or more justices of the peace "where a dangerous lunatick shall be found, by warrant "under their hands and seals, directed to the constables, "church-wardens, and overseers or some of them, of the "parish or place, to cause such lunatick so to be apprehend-"ed, and kept safely locked up in some secure place within "the county, or precinct where the parish or place shall lie, "as such justices shall under their hands and seals direct and "appoint; and (if such justices find it necessary) to be there "chained, if the last legal settlement of such person, shall "be in any parish or place within such county or precinct; "and if such settlement shall not be there, then such danger-"ous lunatick shall be sent to the last legal settlement by pass "*(mutatis mutandis)* as aforesaid; and shall be locked up or "chained by warrant of two justices of the county to which "such person is so sent (4)"—And, by the common law, if it be doubtful whether a criminal, who at his trial is in appearance a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff of the county

1 And 107. 109. 1 Sav. 50, 56, 57. Sum. 226. 1 Hale 35.

(4) But this act relates only to vagrant lunaticks who are strolling up and down the country, and does not extend to persons of rank and condition in the world, whose relations can take care of them properly by applying to the court of Chancery. 2 Atk. 52.

county wherein the court ſits; (5) and if it be found by them that the party only feigns himſelf mad, and he ſtill refuſe to anſwer, he ſhall be dealt with as one that ſtands mute (6).

(5) Every perſon of the age of diſcretion is preſumed of ſane memory until the contrary appear, which may be either by the inſpection of the court, 1 Hale 33. Tr. p. Pais 14. O. B. 1783. No. 4.—By evidence given to the jury, who are charged to try the indictment. 3 Bac. Abr. 81. 1 Hale 33. 35. 36. O. B. 1784. No. 288.—Or, being a collateral iſſue, the fact may be pleaded and replied to *ore tenus*, and a *venire* awarded, returnable *inſtanter*, in the nature of an inqueſt of office. Foſt. 46. Kel. 13. 1 Lev. 61. 1 Sid. 72. 4 Comm. Appen. ſ. 3. And this method, in caſes of importance, doubt, or difficulty, the court will, in prudence and diſcretion, adopt. 1 Hale 35. Sav. 50. 56. 1 And. 154.

(6) By 12 Geo. 3. c. 20. in felony and piracy the judgment ſhall be the ſame, on ſtanding mute, as if the priſoner had confeſſed the indictment or appeal.

Sect. 5. And if one who wants diſcretion commit a treſpaſs againſt the perſon or poſſeſſion of another, he ſhall be compelled in a civil action to give ſatisfaction for the damage.

2 R. Abr. 547. 3 Bac. Ab. 131. B. Cor. 6. Hob. 134. Co. Lit. 247. 289. Plow. 364. 2 Inſt. 284. 414. Pop. 141. Brownl. 197. Noy 129. C. Jac. 467. 1 Hale 15, 16. 20. 4 Comm. 22. 2 Comm. 291.

Sect. 6. And he who is guilty of any crime whatever, through his voluntary drunkenneſs, ſhall be puniſhed for it as much as if he had been ſober.

Crom. 29. Co. Litt. 247. 1 Hale 32. Plow. 19. 4 Comm. 26. 8 St. Tr. 285. 4 Co. 125 Dalt. c. 148.

Sect. 7. Alſo he, who incites a madman to do a murder or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf.

Kely. 53. Dalt. p. 533. 1 Hale 617.

Sect. 8. And if it appear by the circumſtances, that an infant under the age of diſcretion could diſtinguiſh between good and evil, as if one of the age of nine or ten years kill another, and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit, *&c.* as much as if he were of full age. But in ſuch a caſe the judges will in prudence reſpite the execution, in order to get a pardon: and it is ſaid, that if an infant apparently wanting diſcretion be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him without a pardon, *&c.* (7).

F. Cor. 118, 129. Sum. 44. 65. 12. Aſſ. 30. B. Cor. 6. 61. 133. 136. S. P. C. 16. 27. Dalt. 505. 35. H. 6. 11. 1 Hale 434. 569, 570. Plow. 19. Pult. 125. Foſ. 70.

(7) This authority to diſmiſs him muſt be underſtood of a reprieve before judgment, or that the jury find the priſoner within the age of ſeven years, or not of ſufficient diſcretion to judge between good and evil. 1 Hale 27.

Sect. 9. As to the ſecond point, *viz.* How far thoſe are to be excuſed who are under the power of others:—A feme covert is ſo much favoured in reſpect of that power and authority which her huſband has over her, that ſhe ſhall not ſuffer any

Leges Inæ 58. S. P.C. 16. 42. 27 Aſſ. 40. Sum. 65. 4 Comm. 28. Kely. 31.

puniſhment 1 Hale 45. 516. 2 vol. 320. B. Cor. 16. 108. Dalt. 134. 157. O.B. 1784. p. 119. 786.

puniſhment for committing a bare theft (8) in company with, or by coercion of, her huſband.

(8) This exemption extends to burglary· Kely 31. F. Cor. 199. and ſeemingly to robbery, as an offence of a nature certainly not *more* heinous. The reaſon of this rule is ſaid to be "becauſe the wife cannot know what property her huſband may claim in the "goods taken," 10 Mod. 63. If this be the true principle, the caſes of robbery and burglary are in ſome meaſure diſtinguiſhable upon this ſubject; for in burglary, the abſence or preſence of the party is immaterial, but in robbery, preſence is an unavoidable and eſſential ingredient to the crime, and affords to the wife an opportunity of judging in what *ſort of right* the goods are taken. *Vide, infra.* ſect. 11.

3 Inſt. 108. Sum. 65. 1 Hale 44.

Sect. 10. Neither ſhall ſhe be deemed acceſſary to a felony for receiving her huſband, who has been guilty of it, as her huſband ſhall be for receiving her (9).

(9) Nor a principal, though the huſband's offence be treaſon, for ſhe is *ſub poteſtate viri*, and bound to receive him. Neither is ſhe affected by receiving, jointly with her huſband, any other offender. 1 Hale, 48. For ſhe cannot be admitted as a witneſs to diſcover even collaterally, her huſband's guilt. Browni. 47. Dalt. 540. 1 Hale 301. O. B. 1785. p. 181.

Sum. 65, 66. Dalt. 104. F. Cor. 199. 383. 2 B. c. 29. 134. 1 Hale 45. 516. 2 Comm. c. 29. Lucas 63. Kely 31.

Sect. 11. But if ſhe commit a theft of her own voluntary act, or by the bare command of her huſband, or be guilty of treaſon, murder, or robbery, in company with, or by coercion, of her huſband, (10) ſhe is puniſhable as much as if ſhe were ſole.

S. P. C. 10. 19. 142. 4 Comm. 29. *Vide* O. B. 1785. No. 3.

(10) Or receive ſtolen goods of her own ſeparate act, without the privity of her huſband, or, if he, knowing thereof, leave the houſe and forſake her company; ſhe alone ſhall be guilty, as acceſſary. 22 Aſs. 40. Dalt 157. for the coercion which is ſuppoſed to be conveyed by the command or preſence of the huſband is only a preſumption of law, and like other preſumptions may be repelled. 1 Hale, 516. In treaſon no plea of coverture ſhall excuſe the wife; no preſumption of her huſband's coercion ſhall extenuate her guilt, forhe has no right to that obedience from a wife, which he, as a ſubject, has forgotten to pay In murder alſo this privilege is denied, becauſe the offence is repugnant to the laws of nature, which ſhall never be contravened by the refinements of civil ſociety. 4 Comm. 29.

2 Roll. 39. 3 Keb. 34. 1 Sid. 410. Hob. 95. Salk. 384.

Sect. 12. Alſo a wife may be indicted together with her huſband, and condemned to the pillory with him for keeping a bawdy houſe; for this is an offence as to the government of the houſe, in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex.

9 Co. 72. C. Jac. 482. 1 Sid. 210. Moor 813. 2 Keb. 634. Hob. 93. 3 Keb. 34.

Sect. 13. And generally a feme covert ſhall anſwer as much as if ſhe was ſole, for any offence, not capital, againſt the common law, or ſtatute, (and if it be of ſuch a nature that it may be committed by her alone, without the concurrence of the huſband) ſhe may be puniſhed for it without the huſband, by way of indictment, which being a proceeding grounded merely on the breach of the law, the huſband ſhall not be included in it for an offence to which he is no way privy. And if a woman bring a malicious appeal for the death of her huſband, known by her to be alive, ſhe may be impriſoned for the falſe appeal, till ſhe make fine to the king

8 H. 417. F. Cor. 73. B. Imp. 103.

and the husband shall go at large. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same, (as he may be generally to any suit for a cause of action given by his wife) and shall be liable to answer what shall be recovered thereon (11). Post. p. 17. 18. s. 31. 39. Bac. Ab. 294. Noy. 103. Sav. 25. 1 Roll. 93. 233.

(11) She may be indicted alone for a riot. Dalt. 447. For selling gin against the injunctions of the 9 Geo. 2. c. 23. Str. 1120. For recusancy. Str. 1120. Hob. 96. 1 Sid. 410. 11 Co. 64. Sav. 25 For being a common scold, *communis rixatrix*. 6 Mo. 213. 239. For assault and battery. Salk. 384. For forestalling. Sid. 410. For usury. Skin. 348. For barratry. Bac. Ab. 280. Con. Roll. 39. Post, 243. For a forcibly entry. Post. 147. For keeping a gaming house. 10. Mod. 335. Keeping a bawdy-house, if the husband does not live with her. 1 Bac. Ab. 294. For trespass or slander. Keilw. 61. R. Abr. 251. Leon. 122. C. Car. 376.

Sect. 14. Neither a son nor a servant are excused the commission of any crime whether capital or not capital, by the command or coercion of the father or master. Sum. 66. Moor 813. Dalt. 504. 1 Hale 44.

THERE are other exceptions from punishment, than those which have been mentioned in this chapter. First, By casualty and misfortune; thus if in the execution of a lawful act, an unintended death or maim ensue, the party stands excused from all guilt. B. Cor. 229. 22 Ass. 71. 1 Hale, 39. Kel. 123. 4 Co. 124. 4 Comm. 27.—Secondly, by ignorance or mistake; as when a man intending to do a lawful act, does that which is unlawful. Jones, 15. C. Car. 538. But this must be an ignorance, or mistake in fact, and not in law, for *ignorantia juris quod quisque tenetur scire neminem excusat*. Plow. 343. 1 Hale, 42. 4 Comm. 27. Thirdly, By compulsion or necessity; as where the act proceeds from the *lawful* coercion of another; or arises from circumstances of unavoidable constraint; or the impulse of a just and well grounded apprehension of death. 1 Hale, 50. 54. Plow. 183. Inst. 10. Brac. 16. Reg. 88. F. N. B. 177. 1 Comm. 131. 4 Comm. 30. And all these circumstances of accident, necessity, or infirmity, must be satisfactorily proved by the prisoner, unless they arise out of the evidence adduced against him. Fol 255. Ld. Ray. 1493. Str. 773. 1 Hale, 34.

CHAPTER THE SECOND.

OF HERESY.

OFFENCES considered in relation to the persons against whom they are committed, are either,—First, such as are more immediately against God, or, Secondly, such as are more immediately against man.—Offences more immediately against God, are either by common law or by statute. Those at common law are either capital or not capital. The capital offences of this nature are of three kinds: Heresy. Witchcraft. Sodomy.—Concerning Heresy, I shall consider, 1. What it is. 2. By whom it is cognizable. 3. How it is punishable. 4 Comm. 41. Beccar. c. 8.

Sect. 1. As to the first point, it seems, that among protestants, heresy is taken to be a false opinion, repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the Christian faith, or at least of most high importance. 4 Comm. 44. 2 Burn. E. L. 258.—260. 1 Hale 383 to 410. 3 Inst. 40.

Sect.

Sum. 3. 4.
4 Comm. 48.

Sect. 2. But it is impoſſible to ſet down all the particular errors, which may properly be called heretical, concerning which they are, and always have been ſo many intricate diſputes. However, the firſt of Elizabeth, which erected the high-commiſſion-court, having reſtrained the ſame from adjudging any points to be heretical, which have not been determined to be ſuch, either by ſcripture, or by ſome one of the four firſt general councils, or by ſome other council, by expreſs words of ſcripture, or by the parliament, with the aſſent of the convocation; it has been ſince generally holden, that theſe rules will be good directions to eccleſiaſtical courts in relation to hereſy.

3 Inſt. 40.
Sum. 3.

B. Hereſy paſſim.
2 R. Abr, 226.

Sect. 3. As to the ſecond point, *viz.* By whom hereſy is cognizable, it is certain, that the convocation may declare what opinions are heretical: but it hath been queſtioned of late, whether they have power at this day to convene and convict the heretick.

F. N. B. 269.
Sum. 5.
1 Hale. 392.
Gib. 401. 410.
12 Co. 56. 57, 93.
3 Inſt. 40.
2 St. Tr. 275.

Sect. 4. However it is agreed, that every biſhop may convict perſons of hereſy within his own dioceſe, and proceed by church-cenſures againſt thoſe who ſhall be convicted; but it is ſaid, that no ſpiritual judge, who is not a biſhop, hath this power; and it has been queſtioned, whether a conviction before the ordinary were a ſufficient foundation whereon to ground the writ *de hæretico comburendo*, as it is agreed that a conviction before the convocation was.

Sect. 5. By 24 Hen. 8. c. 9. the arch biſhop of either province may cite any perſon before him for hereſy, if the immediate ordinary either conſent thereto, or do not his duty in puniſhng the ſame.

27 H. 8. 14.
5 Co. 58.
Sum. 4.
Hob. 236.
3 Inſ. 39.
12 Rep. 56.
Finch. 219.
1 Salk. 135.

Sect. 6. But it is certain, that a man cannot be proceeded againſt at the common law, in a temporal court, merely for hereſy; yet if in maintenance of his errors he ſet up conventicles and raiſe factions, which may tend to the diſturbance of the publick peace, it ſeemeth that he may in this reſpect be fined and impriſoned, upon an indictment, *&c.* at the common law.

1 Hale, 399.
3 Inſt. 42.
Sum. 4.
1 Roll. 110.
2 Bulſt. 300.

Sect. 7. Alſo a temporal judge may incidently take knowledge whether a tenet be heretical or not; as where one was committed by force of 2 H. 4. c. 5. for ſaying, that he was not bound by the law of God to pay tithes to the curate; and another for ſaying, that though he was excommunicated before man, yet he was not ſo before God. The temporal courts, on an *habeas corpus* in the firſt caſe, and an action of falſe impriſonment in the other, adjudged neither of the points to be hereſy within that ſtatute; for the king's courts will examine all things which are ordained by ſtatute.

5 Co. 5.
1 And. 191.

Sect. 8. Alſo in a *quare impedit*, if the biſhop plead that he refuſed the clerk for Hereſy, it ſeems that he muſt ſet forth the

the particular point, that it may appear to be heretical, to the court wherein the action is brought, which having conuſance of the original cauſe, muſt by conſequence have a power as to all incidental matters neceſſary for the determination of it; and, without knowing the very point alledged againſt the clerk, will not be able to give directions concerning it to the jury, who (if the party be dead) are to try the truth of the allegation. 1 Leon 199. 3 Lev. 314. 1 Hale 407.

Sect. 9. But if a man be proceeded againſt as an heretick in the ſpiritual court *pro ſalute animæ*, and think himſelf aggrieved, his proper remedy ſeems to be to bring his appeal to a higher eccleſiaſtical court, and not to move for a prohibition from a temporal one, which, as it ſeems to be agreed, cannot regularly determine or diſcuſs what ſhall be called hereſy. 5 Co. 88. 27 H. 8. 14.

Sect. 10. As to the third point, *viz.* How hereſy is puniſhable, there is no doubt but that at common law one convicted thereof, and refuſing to abjure it, or falling into it again after he had abjured it, might be burnt by force of the writ, *de hæretico comburendo*, which was grantable out of chancery upon a certificate of ſuch conviction; but it is ſaid, that he forfeited neither lands nor goods, becauſe the proceedings againſt him were only *pro ſalute animæ*. F. N. B. 269. 3 Inſt. 43. Sum. 5. Dr. & St. l. 3. c. 29. Sum. 5.

Sect. 11. But at this day the ſaid writ *de hæretico comburendo* is aboliſhed by 29 Car. 2. c. 9. And all the old ſtatutes which give a power to arreſt or impriſon perſons for hereſy, or introduced any forfeiture on that account are repealed. Yet by the common law, an obſtinate heretick being excommunicate is ſtill liable to be impriſoned by force of the writ, *de excommunicato capiendo*, till he makes ſatisfaction to the church. And by 9 & 10 W. 3. c. 32. "If any perſon having been "educated in, or having made profeſſion of the Chriſtian religion within this realm, ſhall be convicted in any of the courts "of *Weſtminſter*, or at the aſſizes, of denying any one of the "perſons in the holy Trinity to be God, or of maintaining "that there are more Gods than one, or of denying the truth "of the Chriſtian religion, or the divine authority of the holy "ſcriptures, he ſhall for the firſt offence be adjudged uncapable of any office; and for the ſecond, ſhall be diſabled "to ſue any action, or to be a guardian, executor or adminiſtrator; or to take by any legacy or deed of gift, or to bear "any office civil or military, or benefice eccleſiaſtical, for "ever, and ſhall alſo ſuffer impriſonment for three years, "without bail or mainprize, from the time of ſuch conviction." Sum. 4, 5. Gilb. 353. 12 Co. 44. 1 Salk. 293. B. R. H. 314. 3 Jac. 1. c. 21.

CHAPTER

CHAPTER THE THIRD.

Of WITCHCRAFT.

3 Inſt. 44. Dalt. p. 513. 514.

OF offenders of this nature there are ſaid to be three kinds. —Firſt, conjurers, who by force of certain magick words endeavour to raiſe the devil, and to compel him to execute their commands.—Secondly, witches, who by way of friendly conference are ſaid to bargain with an evil ſpirit to do what they deſire of him.—Thirdly, ſorcerers or charmers, who by the uſe of certain ſuperſtitious forms of words, or by means of images, or other odd repreſentations of perſons or things, &c. are ſaid to produce ſtrange effects above the ordinary courſe of nature.

3 Inſt. 44. F. N. B. 269. Summ. 6. S. P. C. 38. C. Eliz. 571.

Sect. 2. All theſe were anciently puniſhed in the ſame manner as hereticks, by the writ *de hæretico comburendo* after a ſentence in the eccleſiaſtical court, and a relapſe. And it is ſaid alſo, that they might be condemned to the pillory, &c. upon an indictment at common law.

1 Hale 383. 45 Ed. 3. 17. B. Cor. 15.

Sect. 3. In the time of king Edward the third, one taken with the head and face of a dead man, and a book of ſorcery, was brought into the king's bench; but there being no indictment againſt him, he was ſworn that from thenceforth he would not be a ſorcerer, and then delivered from priſon, and the head was burnt at his charge: but this method ſeems to be obſolete at this day.

2 Keb. 719.

By 33 H. c. 8. witchcraft and ſorcery were made felony, without clergy.—But acceſſaries after were intitled, 1 Hale 7.

Sum. 6 7. 4 Inſt. 45. con.

Sect. 4 By 1. Jac. 1. c. 12. (the only law now in force againſt theſe offenders) they are divided into two degrees; and thoſe in the firſt degree, and their acceſſaries before, ſhall ſuffer as felons without clergy. Of theſe there are the four following ſpecies: *Firſt*, Such as ſhall uſe any invocation or conjuration of any evil ſpirit: and ſuch ſeem clearly to be within the law, though no ſpirit actually appear.—*Secondly*, Such as conſult, covenant with, entertain, employ, feed, or reward any evil ſpirit to any intent: and theſe are agreed to be within the ſtatute, though nothing farther be done upon ſuch conſultation, &c.—*Thirdly*, Such as take up any dead perſon's body, or any part thereof, to be uſed in any manner of witchcraft: and theſe are alſo clearly within the ſtatute, though they do not actually ſo uſe it.—*Fourthly*, Such as exerciſe any witchcraft, inchantment, charm, or ſorcery, whereby any perſon ſhall be killed, deſtroyed, conſumed, or lamed in his or her body, or any part thereof. But none are within this branch who do not actually effect ſuch miſchief.

1 Jon. 143.

Sect.

Sect. 5. Thoſe in the ſecond degree ſhall, for the firſt offence ſuffer a year's impriſonment, and the pillory; and for the ſecond, as felons without clergy. And theſe, by the manifeſt purport of the words of the act, which is very obſcurely penned, ſeem to be divided into the two following ſpecies: *Firſt*, ſuch as take upon them by witchcraft, inchantment, charm or ſorcery to tell where treaſure is to be found, or where things loſt or ſtolen may be found, or to do any thing to the intent to provoke any perſon to unlawful love, or to hurt or deſtroy any perſon in his or her body, though the ſame be not effected. *Secondly*, Such as ſhall uſe any witchcraft, *&c.* whereby any cattle or goods of any perſon ſhall be deſtroyed, waſted or impaired: but thoſe, who take upon them to do this, are not within the act unleſs they actually do it.

12 Mod. 556.

Vide 4 Geo. c. 11.

Sum. 8.
3 Inſt. 46.

† But this ſtatute of James is repealed by 9 Geo. 2. c. 5. which enacts, "That no proceeding ſhall be had againſt any perſon for witchcraft, ſorcery, inchantment or conjuration, or for charging another with ſuch crimes; and that whoever ſhall pretend to exerciſe thoſe acts, or ſhall undertake to tell fortunes, or pretend by crafty ſcience to diſcover ſtolen goods, ſhall be impriſoned for one year, ſtand four times in the pillory, and find ſureties as the court ſhall think fit." Alſo by 17 Geo. 2. c. 5. "All jugglers, fortune tellers, gypſies pretending phyſiognomy, palmeſtry, or the like crafty ſcience, ſhall be deemed rogues and vagabonds, and ſuffer as the act directs."

CHAPTER THE FOURTH.

OF SODOMY.

ALL unnatural carnal copulations, whether with man or beaſt, ſeem to come under the notion of ſodomy, which was felony by the ancient common law, and puniſhed, according to ſome authors, with burning; according to others, with burying alive: but at this day by force of 25 H. 8. c. 6. & 5 Eliz. 17. is puniſhed in the ſame manner as other felonies, which are excluded from clergy (1).

12 Co. 36, 37.
3 Inſt. 58.
Puff. ch. 3.
Forteſc. 91.
4 Bac. Ab. 569.

(1) According to Britton b. 6. c. 9. theſe unnatural offenders were on conviction committed to the flames. Fleta b. 6. c. 35. buries them alive within the earth, and the Mirrour c. 1. ſ. 14. conſigns them, with juſt indignation, to ſhameful and eternal oblivion.

Sect. 2. In every indictment for this offence, there muſt be the words, *rem habuit veneream, & carnaliter cognovit*; and conſequently

12 Co. 36, 37.
3 Inſt. 58.
Qu 1 Hale 628. 670. *Sed vide*

† St. Tr. 388. Duffey's caſe 1721. Hollis's caſe, at Lincoln, 1781. Prentice's caſe, Admiralty Seſſ. 1786.

consequently some kind of penetration, and also of emission, must be proved; but any the least degree is sufficient, and emission is *prima facie* an evidence of penetration.

† By the 22 Geo. 2. c. 33. s. 19. "If any person in his "Majesty's fleet commits this crime, their aiders and abettors "they shall suffer death by court martial."

CHAPTER THE FIFTH.

OF OFFENCES AGAINST GOD NOT CAPITAL AT COMMON LAW.

3 Bac. Ab. 38. OFFENCES more immediately against God not capital are either by the common law or statute. Those by the common law are,

1 Vent. 293. 3 Keb. 607. 2 Str. 834. 4 Comm. 59. 1 Black. 395. *Sect.* 1. All blasphemies against God, as denying his being or providence, and all contumelious reproaches of Jesus Christ.

11 Mod. 142. Str. 416. 788. 834. *Sect.* 2. All profane scoffing at the holy scripture, or exposing any part thereof to contempt or ridicule.

1 Bar. K. B. 20. 1 Burn. 225. 4 Comm. 41. 3 Burn E. L. 201. Fitzg. 65.

1 St. Tr. 802. 1 Sid. 168. 1 Keb. 620. *Sect.* 3. Impostors in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments, &c.

Can. 109. Dalt. 124. 2 Haw. 61. 1 Haw. 132. *Sect.* 4. All open lewdness grossly scandalous, such as was that of those persons, who exposed themselves naked to the people in a balcony in Covent-garden with most abominable circumstances.

1 Ven. 293. 3 Keb. 621. Pop. 208. 1 Sid. 168. Scobell 121. 4 Comm. 64 65 Str. 776. 788. *Sect.* 5. Offences of this nature, because they tend to subvert all religion or morality, which are the foundation of government, are punishable by the temporal judges with fine and imprisonment, and also such corporal infamous punishment as to the court in discretion shall seem meet, according to the heinousness of the crime.

Ld. Ray. 451. 2 R. Abr. 187. C. Jac. 44. 421. *Sect.* 6. Seditious words in derogation of the established religion are indictable, as tending to a breach of the peace; as these, your religion is a new religion, and preaching is but prattling, and prayer once a day is more edifying.

CHAPTER

CHAPTER THE SIXTH.

Of OFFENCES against RELIGION.

OFFENCES, by ſtatute, not capital, more immediately againſt GOD, are either ſuch as are againſt religion in general; or againſt the eſtabliſhed church. 4 Comm 63.

Thoſe againſt RELIGION IN GENERAL, are of ſeveral kinds.

Sect. 1. Firſt profanation of the Lord's Day.—By 27 Hen. c. 5. "all manner of fairs and markets upon feaſt days, or on *Sundays*, (the four Sundays in harveſt excepted,) ſhall clearly ceaſe, on pain of forfeiting the goods expoſed to ſale." Dalton c. 46. Gibſon 236.

By 1 Car. 1. c. 1. "there ſhall be no meetings, aſſemblies, or concourſe of people out of their own pariſhes on the Lord's Day.—Nor any bear-beating, bull beating, interludes, common plays, or other unlawful exerciſes and paſtimes uſed by any perſon or perſons within their own pariſhes, (a) on pain of forfeiting 3*s.* & 4*d.* to the poor for every offence, on conviction, before a magiſtrate, on view, confeſſion, or the oath of one witneſs, "to be levied by diſtreſs, or, in default, to be ſet three hours in the ſtocks."

(a) This act impliedly allows innocent recreations, within the reſpective pariſhes, after divine ſervice is over. 4 Comm. 63.

By 3 Car. 1. c. 2. "no pack-horſe, waggon, cart, wain, nor any drover with cattle, ſhall travel on the ſaid day on pain of twenty ſhillings.—Nor ſhall any butcher (b) kill, or ſell any victuals upon the ſaid day on pain of 6*s.* 8*d.*"

(b) This is no offence at common law, the indictment therefore muſt conclude *contra formam ſtatuti*. Strange 702. But at ſeſſions it is uſual to indict for the nuiſance in keeping open ſhop. C. C. C. 372.

† *Sect.* 2. By 29 Car. 2. c. 7. "no tradeſman, labourer, or other perſon, above the age of 14 years, ſhall exerciſe any worldly buſineſs, labour, or work of their ordinary callings on the Lord's day, (works of neceſſity (c) and charity only excepted) on pain of forfeiting 5*s.* And no perſon ſhall publickly cry, ſhew forth, or expoſe to ſale (d) any wares, merchandizes, fruit, herbs, goods or chattels whatſoever, upon the Lord's day on pain of forfeiture. And by Par. 2. no drover, horſe-courſer, waggoner, butcher, higgler, or their ſervants, ſhall travel or come to his inn or lodging "on

(c) Therefore a baker may bake victuals for dinner for his cuſtomers, 2 Burn 785. But *quære*, as to puddings, pies, bread, and hot rolls, 11 Mod. 114. Cowper 640. But the offender cannot be convicted more than once for any number of acts on the ſame day. Creeps v. Durden. Trin. 17 Geo. 3. (d) By 1 Jac. 1. c. 22. no ſhoemaker ſhall expoſe to ſale any ſhoes, &c. on pain of 3*s.* 4*d.* a pair.

" on pain of 20*s*. Nor ſhall any perſon uſe, employ, o
Raymond 240. " travel with any boat, wherry, lighter, or barge, witho
5 Modern. 449. " permiſſion from a juſtice, on pain of 5*s*. And if any perſo
2 Salk. 672. " which ſhall travel, be then robbed, no hundred ſhall b
1 Modern 56. " charged. And no perſon upon the Lord's day ſhall ſerve an
Cro. Car 602. " writ, proceſs, *&c.* (except in caſes of treaſon or felony,) bu
3 Bac. Abr. 39. " the ſame ſhall be void, and the offender liable in damages."
Term Reports, 265. By 13 Geo. 3. c. 80. " no perſon ſhall on a Sunday or o
" Chriſtmas day, kill any game, or uſe any gun, dog, net, o
" engine for that purpoſe, on pain from 10*l*. to 20*l*. for the firſ
" offence; from 20*l*. to 30*l*. for the ſecond; and being com-
" mitted for the third offence till the ſeſſions, unleſs he give
This *qui tam* penalty muſt be ſued for within ſix weeks. " bail." By 21 Geo. 3. c. 4. " every place of publick enter-
" tainment or debating, opened upon any part of the Lord's
" day, to which admittance ſhall be had for money or tickets,
" or by charging an extraordinary price for refreſhments, &c.
" ſhall be deemed a diſorderly place, and the viſible keeper
" ſhall forfeit 200*l*. the chairman 100*l*. the perſon collecting
" the money or tickets, 50*l*."

Sect. 3. But by 10 & 11 W. 3. c. 24. " Mackrell are per-
" mitted to be ſold both before and after divine ſervice, on
" *Sundays*." And fiſh carriages (by 2 Geo. 3. c. 15.) ſhall be
Appointed by the Watermen's Company. allowed to paſs whether laden, or returning empty. By 11 &
12 W. 3. c. 21. " Forty watermen may ply on the Thames.
" And hackney coachmen and chairmen are permitted by 9
" Ann. c. 23. to work within the bills of mortality." By 29
Car. 1. c. 7. " meat may be dreſſed and ſold in inns, cook-
" ſhops, or victualling-houſes." " And milk may be cried and
" ſold, on the Load's day, before 9 in the morning, and after
" 4 in the afternoon."

Sect. 4. Secondly, Profane curſing and ſwearing. By 19
Geo. 2. c. 21. " if any perſon ſhall profanely curſe or ſwear,
" and be convicted on oath of one witneſs, or by confeſſion,
" or by the hearing of one magiſtrate, he ſhall forfeit, firſt,
8 Modern 59. " Every day-labourer, common ſoldier, ſailor, or ſeaman, 1*s*.—
Seſſ. Caſ. 356. " 2dly, Every other perſon under the degree of a gentle-
Sayer 304. " man, 2*s*.—3dly, Every perſon of, or above the degree of a
Strange 498, 608, 686, 990. " gentleman, 5*s*. On a ſecond conviction double; and for
Bur. 150, 1036. " every other, treble the ſum firſt forfeited, for the benefit of
2063. Ld. Raym. 1368. " the poor; or being a labourer or gentleman, confined to
1376, 1387. " hard labour for 10 days, or being a common ſoldier, or
10 Modern 213. " ſailor *in employ*, ſet in the ſtocks for one hour, for every
1 Burn. 401. " ſingle offence, and two hours for any greater number
" at the ſame time." The conſtable to make informa-
tion if the offender be known to him; if unknown he is
required to carry him before a juſtice.(a). The proſecution
muſt

(a) In other perſons it is intirely optional. 4 Burn 299.

N. B. This act directs the form of the conviction. Vide Burn's Juſt. 401.

muſt be within eight days. The act to be read in all churches after every quarter day. The magiſtrate neglecting his duty forfeits five pounds; the conſtable forty ſhillings, &c. And by 22 Geo. 2. c. 33. This offence committed in his Majeſty's fleet, may be puniſhed at the diſcretion of a court martial. C. Car. 285. 1 Burn. 40.

Sect. 5. Thirdly, Drunkenneſs, for which by 4 Jac. 1. c. 5. all perſons whatſoever forfeit five ſhillings to the poor; and for which ſeamen may by 22 Geo. 2. c, 33. be puniſhed by fine, &c, as the court martial ſhall think fit. 1 Jac. 1. c. 9. 7 Jac. 1. c. 10. 21 Jac. 1. c. 7. 1 Car. 1. c. 4.

Sect. 6. Fourthly, Reviling the ſacrament of the Lord's ſupper with contemptuous words, &c. for which by 1 Edw. 6. c. 1. which was repealed by 1 Mary c. 2. and revived by 1 Eliz. c. 1. the offender ſhall be impriſoned, fined, and ranſomed. 4 Comm. 50.

† By 3 Jac. 1. c. 21. "Whoever ſhall uſe the name of the "holy Trinity profanely or jeſtingly, in any ſtage play, in- "terlude, or ſhew, ſhall be liable to a *qui tam* penalty of ten "pounds." By 1 Will. 3. c. 18. ſ. 17. "Whoever ſhall deny "in his preaching, or writing the doctrine of the bleſſed Trinity "ſhall looſe all benefit of the act for granting toleration, &c."

Sect. 7. I ſhall not mention the offences againſt 2 & 3 Edw. 6. c. 19. & 5 Eliz. c 5. relating to faſts and fiſh-days, becauſe it is expreſsly declared, that thoſe ſtatutes are enacted merely on a political account, and it is made penal to affirm that any eating of fiſh, or forbearing of fleſh mentioned therein, is neceſſary to ſalvation, or that it is the ſervice of God. 2 Burn. 185, 186.

CHAPTER THE SEVENTH.

OF OFFENCES AGAINST THE COMMON-PRAYER,

OFFENCES againſt the eſtabliſhed church are, Firſt, Such as concern all perſons in general; Secondly, Such as more immediately relate to thoſe of the Popiſh religion; Thirdly, Such as more immediately regard Proteſtant diſſenters.—Thoſe which concern all perſons in general are, Firſt, Againſt the Common Prayer. Secondly, In accepting or holding an office without due conformity to the church. Thirdly, In teaching ſchool without conforming to the church. Fourthly, In not coming to church.

Sect. 1. And firſt of offences againſt the Common Prayer. As to which it is to be obſerved, That by 2 & 3 Edw. 6. c. 1. & 6 Edw. 6. c. 1. which were repealed by 1 Mary 2. c. 2 and revived by 1 Eliz. c. 2. the Common Prayer Book, was firſt eſtabliſhed under 4 Comm. 50. 1 Lev. 295. Can. 5, 6, 7. Gib. 259. 3 Burn. E. L. 220.

under ſevere penalties, but the ſame penalties being repeated and enlarged by 1 Eliz. c. 2. and 13 and 14 Car. 2. c. 4. which enacts the uſe of the ſame common prayer with ſome alterations thoſe ſtatutes of Edward the ſixth, ſeem, at this day to be of little uſe.

Sect. 2. By 1 Eliz. c. 2. ſ. 4, 5, 6. "If any parſon, vicar or other whatſoever miniſter, that ought to ſay the ſaid "Common Prayer, *&c.* ſhall refuſe to uſe it in ſuch church "*&c.* or other place where he ſhould uſe to miniſter the ſame, "or wilfully or obſtinately ſtanding in the ſame, uſe any other "form, or ſpeak any thing in derogation of the ſaid book, or "any thing therein contain'd, he forfeits for the firſt offence one "year's profit of all his ſpiritual promotions, and ſhall ſuffer ſix "months impriſonment; and for the ſecond offence ſhall be de-"prived, *&c.*"

Form of the indictment, 3 Mod. 78.

Sect. 3. In the conſtruction of this act it has been reſolved, Firſt, that under the words, "Parſon, vicar, or other whatſoever "miniſter, that ought or ſhould ſay the ſaid Common Pray-"er, *&c.*" thoſe clergymen who have no cure are included, as much as thoſe who have one, and that they are puniſhable for uſing any other form, *&c.* inaſmuch as by their ordination they are obliged to officiate in the offices of the church, *&c.* and it is ſaid that they are ſufficiently ſhewn to be in holy orders by the word *clericus* in an indictment.

Dyer 203. 1 Leo. 295.

Sect. 4. Secondly, that this ſtatute being not only in the affirmative, but alſo expreſsly ſaving the juriſdiction of eccleſiaſtical courts, does not reſtrain them from proceeding againſt theſe offenders in their own methods, as diſturbers of the unity and peace of the church; and conſequently that ſuch perſons may be deprived by the ſaid court according to the courſe of the ſpiritual law, for the firſt offence.

Gib. 268. 5 Co. Cawdry's Caſe, 5, 6. Pop. 59. 2 R. Abr. 222.

Sect. 5. Alſo it is further enacted, by 1 Eliz. c. 2. ſ. 9. "That if any perſon ſhall in plays, ſongs, or other open words, "ſpeak any thing in derogation, depraving or deſpiſing of the "ſaid book, *&c.* Or by open fact compel, or otherwiſe procure or maintain any miniſter to ſay any Common Prayer openly, *&c.* in other form: or ſhall by any of the ſaid means let any miniſter to ſay the ſaid Common Prayer, *&c.* he ſhall forfeit one hundred marks for the firſt offence, and four hundred "for the ſecond, *&c.* (which if he pay not within ſix weeks after conviction, he ſhall ſuffer ſix months Impriſonment for the "firſt offence, and twelve for the ſecond) and for the third of-"fence ſhall forfeit all his goods and chattels, and ſhall ſuffer "impriſonment for life.

Vide 7 & 8 Sections of this act. The 13 & 14 Car. 2. c. 4. inforced by 5 Ann. c. 5. and 22 Geo. 2. ch. 33.— 2 Shower 53.

Sect. 6. It has been made a queſtion in the conſtruction of this clauſe, whether if the party die within ſix weeks, the ſaid forfeiture be not diſcharged, ſince by the act of God the election of paying it, or ſuffering impriſonment in lieu of it, is taken away.

Dyer 203. 231.

CHAP.

CHAPTER THE EIGHTH.

OF OFFENCES IN ACCEPTING OR HOLDING AN OFFICE WITHOUT DUE CONFORMITY TO THE CHURCH.

OFFENCES in accepting or holding an office, without due conformity to the church, are of two kinds. First, in not receiving the ſacrament both before and after the acceptance of an office. Secondly, in going to any other place for religious worſhip, than church during the continuance in an office. 4 Comm 57.

Sect. 1. As to the firſt of theſe offences, it is enacted by 13 Car. 2. ſt. 2. c. 1. ſ. 10. 12. "That no perſon ſhall be placed, elected or choſen, to any office or place of mayor, alderman, recorder, bailiff, town-clerk, common-council-man, or other office of magiſtracy, place of truſt, or other employment relating to the government of any city, corporation, borough, cinque port or other port town, who ſhall not have received the ſacrament, according to the rights of the church of England, within one year next before ſuch election; and that every perſon, ſo placed or elected, ſhall take the oaths of allegiance and ſupremacy, at the ſame time when the oath for the due execution of the ſaid office, *&c.* ſhall be adminiſtered; and that the ſaid oaths ſhall be adminiſtered and tendered by thoſe who adminiſter the oath of office, and in default of ſuch, by two juſtices of the peace of the corporation, *&c.*" 2 Vent. 247. Salk. 428. Which makes it neceſſary in a return to a *mandamus*, ſetting forth that the party did not take the oaths before the mayor, *&c.* to add, that he did not take them before two juſtices of peace, *&c.* 5 Mod. 316. And it is further enacted, "That on default hereof, every ſuch election, placing and choice ſhall be void." 2 Jon. 121. And it hath been adjudged to be no excuſe, that the oaths were not tendered. *Sed vide* 3 Burn 249.

† But now by 5 Geo. 1. c. 6. for eſtabliſhing the peace and quiet of corporations, it is enacted, "That all perſons required to take the ſaid oath, or ſubſcribe the ſaid declaration, ſhall be confirmed in their reſpective offices, and be free from all incapacities and penalties; and none of their acts ſhall be queſtioned, notwithſtanding their omiſſion to take the oath, or ſubſcribe the ſaid declaration.—And that ſo much of the ſaid act as requires the taking or ſubſcribing the ſame is repealed." And it is further enacted, "That all perſons in the actual poſſeſſion of any office that were required by the above act, to take the ſacrament within one year next before their election into ſuch office ſhall be confirmed in their reſpective offices, and be diſcharged of all

"incapacities,

" incapacities, and none of their acts ſhall be queſtioned, " notwithſtanding their omiſſion to take the ſacrament as afore- " ſaid, nor ſhall they be removed by the corporation, or other- " wiſe proſecuted for or by reaſon of ſuch omiſſion, unleſs ſuch " perſon be ſo removed, or ſuch proſecution commenced with- " in ſix months after the election." (1)

(1) If neither of theſe events have happened within the time limited, the election becomes abſolute and unavoidable. 1 Black 229. Burr. 1018. Cowp. 539, 540. for the ſtatute operates as a protection to the poſſeſſion and not as a bar to the remedy. *Vide infra* N. (2)

Ch. 24. ſ. 7.

† However by 1 Geo. 1. ſt 2. ſ. 13. amended by 2 Geo. 2. c. 31 and 9 Geo. 2. c. 26. " All perſons who bear any office, " civil or military, *&c.* ſhall take the oaths, therein recited, of " allegiance and ſupremacy (a); and the oath of abjuration (b). " Alſo all perſons who were before, ſhall ſtill continue, oblig- " ed to receive the ſacrament. And ſubſcribe the declaration " againſt tranſubſtantiation (c). And by 11 Geo. 1. c. 4. ſ. 4. " mayors, bailiffs, or other chief officers of corporations, " elected purſuant to the directions of that ſtatute, ſhall take " the oaths, by law required, at the time of their admiſſion " into ſuch office, *before* ſuch officer as ſhall preſide at ſuch " election."

(a) As recited 6 Geo. 3. c. 53.

(b) As recited 1 W. & M. c. 1. ſ. 4. 8.

(c) As recited 25 Car. 2. c. 2. ſ. 9. 1 Burr. 292. 306. 4 Burr. 2132.

Sect. 2. Alſo it is enacted by 25 Car. 2. c. 2. " That all " offices, civil and military, except thoſe of inheritance, " appointing ſufficient deputies, and all who have any fee, *&c.* " by patent from the king, except ſuch as ſhall be granted " for valuable conſideration for life or years, and not relate " to any office or place of truſt, and alſo all who have any " place of truſt, or any employment in the king's houſhold, " ſhall take the oaths of allegiance and ſupremacy, and teſt, " the

3 Burn 257. 4 Mod. 233. 1 Geo. 1. ſt. 2. ſ. 13. poſt. ch. 24. ſ. 7.

(2) For various deciſions upon the corporation and teſt acts, as they reſpect the conduct or proteſtant diſſenters *vide* the King v. Read, 2 Mod. 299. Mayor of Guilford v. Clark 2 Ventris 248. The King v. Larwood, Skin. 574. 4 Mod. 269. Salk. 167. Carth. 306. and the King v. Groſvenor, Str. 1193. But in the caſe of Harriſon, Chamberlain of London v. Evans in 1762. the queſtion was very elaborately determined.—In 1748. the corporation of London, by a bye law, impoſed a fine of ſix hundred pounds, upon every perſon, who, being elected, ſhould refuſe to ſerve the office of ſheriff.—The plaintiff levied debt, in the ſheriff's court, againſt the defendant for this penalty. The defendant pleaded the 13 Car. 2. averring that he was a proteſtant diſſenter within the toleration act, 1 & 2 W. & M. c. 18. of ſcrupulous conſcience; and therefore had not received the ſacrament. The plaintiff replied the 5 Geo. 1. c. 6. which confirms members of corporations in their reſpective offices, although they have not received the ſacrament according to the directions of the 13 Car. 2. To this replication the defendant demurred; and judgment was given upon it in favour of the city. The defendant appealed to the court of huſtings, where the judgment was affirmed. A ſpecial commiſſion of errors was ſued out by the defendant directed to Willes, Parker, Foſter, Bathurſt, and Wilmot; and, after great argument and deliberation, the judgment of the ſheriff's court, and the affirmance by the court of huſtings, were unanimouſly reverſed. The plaintiff brought a writ of error in parliament; and on the 4th of February 1767. Lord Mansfield, with five other judges againſt Perrott, were of opinion, that, upon the facts admitted by the pleadings in this cauſe, the defendant Evans, ſhould be allowed to object to the validity of his election to the office of ſheriff, in bar to the preſent action; by reaſon that he had not taken the ſacrament within the time limited. Append. to Furneaux Letters. 2 Burn. Ecc. L. 168. Cowp. 393. 535.

"the next term, in the King's Bench, or Chancery, or "Quarter-Seſſions, and receive the ſacrament within three "months, and give in a certificate thereof, proved by two "witneſſes, to the court wherein they take the ſaid oaths. "And in caſe of neglect, ſhall be diſabled to hold the ſaid "offices, &c. and forfeit five hundred pounds, except femes "covert, &c."—But it hath been adjudged, that the perſons ſo diſabled loſe only their right to the profits of their offices from the time of ſuch diſability; but that they loſe nothing veſted in them before. Alſo, it hath been adjudged to be no excuſe for a perſon bound by law to accept a corporation office, that he is diſabled to receive the ſacrament, by having been excommunicated.—And *quære*, if it be any excuſe, that his conſcience will not ſuffer him to take it, being a proteſtant diſſenter, &c. *Vide* note 2, p. 16,

Lutw. 910. 2 Mod. 299. Gibſ. 506. Comb. 315. Sav. 43. And. 200.

Sect. 3. Notwithſtanding the words of the firſt of theſe acts are ſo very ſtrong as to make ſuch election, &c. void, and thoſe of the ſecond to make ſuch perſons diſabled in law to all intents and purpoſes whatſoever, to have, occupy, or enjoy the ſaid offices; yet it hath been ſtrongly holden, that the acts of one under ſuch a diſability, being inſtated in ſuch an office, and executing the ſame without any objection to his authority, may be valid as to ſtrangers. For otherwiſe not only thoſe who no way infringe this law, but even thoſe whoſe benefit is intended to be advanced by it, might be ſufferers for another's fault, to which they are no way privy; and one chaſm in a corporation happening thro' the default of one head officer would perpetually vacate the acts of all others, whoſe authority, in reſpect of their admiſſion into their offices, or otherwiſe, may depend on his.

3 Keb. 606, 665, 682, 721. 2 Jon. 81, 137. 2 Lev. 184, 242. 2 Mod. 193. 3 Lev. 116.

5 Mod. 431, 432. Vide 3. Burn. 258. and 1 Geo. 1. ſt. 2. c. 13. ſ. 20.

Sect. 4. By 25 Car. 2. c. 2. ſ. 17. it is expreſsly provided, that "The ſaid act ſhall not extend to conſtables or church-"wardens, or ſuch like inferior civil officers, or to a bailiff of a "manor or lands, or ſuch like private officers."

But it hath been queſtioned, whether it extends to the cenſor of the college of phyſicians.

Sect. 5. As to the ſecond offence of this kind, *viz.* that of going to any other place for religious worſhip than the church, during the continuance of an office, it is enacted, by 5 Geo. 1. c. 4. "That if any mayor, bailiff, or other magiſtrate, in Eng-"land, Wales, Berwick upon Tweed, Jerſey or Guernſey, "ſhall knowingly or wilfully reſort to, or be preſent at any pub-"lick meeting, for religious worſhip, other than the church of "England, as by law eſtabliſhed, in the gown or other peculiar "habit, or attended with the enſign or the enſigns, of or belong-"ing to ſuch his office, that every ſuch mayor, bailiff, or other "magiſtrate, being thereof convicted by due courſe of law, ſhall "be diſabled to hold ſuch office, or employments, and ſhall be "adjudged incapable to bear any public office or employment

(The 10 Ann. c. 2. recited in the former edition is repealed by the 5 Geo. 1. c. 4.)

"whatsoever within England, Wales, Berwick upon Tweed,
4 Comm, 54. "Jersey, or Guernsey."

CHAPTER THE NINTH.

OF OFFENCES IN TEACHING SCHOOL WITHOUT CONFORMING TO THE CHURCH.

AS to the offence of teaching school without conforming to the church, so far as it concerns all persons in general, it is enacted by 23 Eliz. c. 1. s. 6, 7. "That if any person or "persons, body politick or corporate, shall keep or maintain "any school-master, who shall not repair to church according "to the form of the said statute, or be allowed by the bishop or "ordinary of the diocese. (who shall not take any thing for the "said allowance) they shall forfeit for every month ten pounds; "and such school-master presuming to teach contray to the said "act, and being thereof convicted, shall be disabled to be a "teacher of youth, and shall suffer imprisonment, without bail "or mainprize, for one year."

Sect. 2. And it is further enacted by 1 Jac. 1. c. 4. s. 9. "That no person shall keep any school, or be a schoolmaster,
Carth. 464. 465. 1 Vent. 41. "out of the universities or colleges of this realm, except it be in
Vide 19 Geo. 3. c. 44. Post Ch. 16. s. 5. "some publick or free grammar-school, or in some such noble-"man's or noblewoman's, or gentleman's, or gentlewoman's "house, as are not recusants, or where the same schoolmaster, "shall be specially licensed thereunto by the archbishop, bishop "or guardian of the spiritualities of that diocese, upon pain, that "as well the school-master, as also the party that shall retain or "maintain any such school-master, contrary to the meaning of "the said statute, shall forfeit each of them, for every day so "wittingly offending, forty shillings."

(The 12 Anne was recited in the former edition.)

† *Sect.* 3. But it having been doubted whether such persons as are within the benefit of 1 William & Mary, c. 18. commonly called the *Toleration Act*, are not exempted from the penalties of the abovementioned statutes, it was explained by 12 Anne, st. 2. c. 7.—But this act being repealed by 5 Geo. 1. c. 4. the operation of the act of toleration is consequently revived, by which it is enacted "that neither the 23 Eliz. c. 1. nor any other law or "statute of this realm, made against papists, or popish recusants, "except 25 Car. 2. c. 2. and 30 Car. 2 st. 2. c. 1. shall be con-"strued to extend to any person dissenting from the church of
As to popish schoolmasters in particular. Vide ch. 5. s. 3. "England that shall take the oaths mentioned in the first of Wil-"liam and Mary, and subscribe the declaration mentioned in "the 30 Car. 2. c. 1."

CHAP

CHAPTER THE TENTH.

Of OFFENCES in not coming to CHURCH.

FOR the better underſtanding of the offences of not coming to church, ſo far as the ſame relate to all perſons in general, except ſuch as are within the indulgence of 1 William & Mary, c. 18. which is commonly called *The Toleration Act*, I ſhall conſider,—Firſt, How far perſons are puniſhable for their own abſence from the church.—Secondly, how far they are puniſhable for ſuffering ſuch abſence in others.

In order to ſhew how far perſons are puniſhable for their own abſence, I ſhall conſider the following particulars: Firſt, What forfeitures of money, lands or goods, ſuch offenders incur. Secondly, In what manner they are to be proceeded againſt for thoſe forfeitures. Thirdly, What other inconveniencies they are ſubject unto. Fourthly, By what means they may be diſcharged.

As to the firſt point, I ſhall conſider, *Firſt*, What forfeitures of money; and, *Secondly*, What forfeitures of lands and goods ſuch offenders are liable unto.

The forfeitures of money, to which they are liable, are threefold; 1. That of twelve pence for the abſence of one Sunday, or other holy-day. 2. That of twenty pounds for the abſence of every month contained in a conviction. 3. That of twenty pounds for the abſence of every month after a conviction.

Sect. 1. And firſt, The forfeiture of twelve-pence for the abſence of one Sunday, or other holy-day, depends upon 1 Eliz. c. 2. by which it is enacted, "That all perſons inhabiting within this realm, or any other the king's dominions, ſhall diligently and faithfully, having no lawful or reaſonable excuſe to be abſent, endeavour to reſort to their pariſh church or chapel accuſtomed, or upon reaſonable let thereof, to ſome uſual place, where common prayer and ſuch ſervice of God ſhall be uſed, in ſuch times of let, upon every Sunday, and other days ordained and uſed to be kept as holy-days, and then and there to abide orderly and ſoberly, during the time of the common prayer, preaching, or other ſervice of God, there to be uſed and miniſtered, upon pain of puniſhment by the cenſures of the church, and alſo upon pain that every perſon ſo offending ſhall forfeit for every ſuch offence twelve-pence."

By 3 Jac. c. 4. ſ. 27, 28. this forfeiture may be levied by the churchwardens by diſtreſs by warrant of one juſtice.

Sect. 2. In the expoſition of this ſtatute, the following opinions have been holden. *Firſt*, That the indictment needs not

2 Leon. 5. Godb. 148. 29 El. c. 6. ſ. 5. Gib. 291. 964.

ſhew that the party had no reaſonable excuſe for his abſence, or that he is an inhabitant within this realm, &c. But that the defendant, if he have any matter of this kind in his favour, ought to ſhew it.

2 Roll. 438, 455. 1 Bulſt. 159. Gib. 358. 292.

Sect. 3. *Secondly*, That if the ſpiritual court proceeding upon this ſtatute, refuſe to allow a reaſonable excuſe, they may be prohibited; but that if they proceed wholly on their own canons, they ſhall not be at all comptrolled by the common law, (unleſs they act in derogation from it) as by queſtioning a matter not triable by them, as the bounds of a pariſh, &c. for they ſhall be preſumed to be the beſt judges of their own laws.

1 Roll. 93. 1 Keb. 491. Godb. 148. Dalt. c. 45. f. 166. 1 Sid. 301, 230. Gib. 292. 2 Keb. 124.

Sect. 4. *Thirdly*, That he who miſbehaves himſelf in the church, or miſſes either morning or evening prayer, or goes away before the whole ſervice is over, is as much within the ſtatute as he who is wholly abſent; and that he who is abſent from his own pariſh church, ſhall be put to prove where he went to church.

1 And. 139. Hob. 251. 2 Leon. 167.

Sect. 5. *Fourthly*, That the offence in not coming to church conſiſting wholly in a non-feaſance, and not ſuppoſing any fact done, but barely the omiſſion of what ought to be done, needs not be alledged in any certain place; for, properly ſpeaking, it is not committed any where.

Prec. of declaration, Lutwych 201, 208.

Sect. 9. Secondly, The forfeiture of twenty pounds for the abſence of a whole month contained in a conviction, depends upon 23 Eliz. c. 1. ſ. 5. by which it is enacted, "That every "perſon, above the age of ſixteen years, who ſhall not repair "to ſome church, chapel, or uſual place of common prayer, "but forbear the ſame, contrary to the tenor of the ſaid ſtatute "of 1 Eliz. ch. 2. and being thereof lawfully convicted, ſhall "forfeit to the king, for every month which he or ſhe ſhall ſo "forbear, twenty pounds."

11 Co. 63. 1 Roll. 94.

Sect. 7. In the expoſition hereof it hath been reſolved, *Firſt*, That this ſtatute, by inflicting twenty pounds for a month's abſence, diſpenſes not with the forfeiture of twelve-pence given by 1 Eliz. c. 2. for the abſence of one Sunday; for both may well ſtand together, and the twelve-pence is immediately forfeited upon the abſence of each particular day.

Lutw. 162, 163. 11 Co. 57. 59. 1 Roll. 89, 90. 233, 234. Dyer 160. 3 Bulſt. 87.

Sect. 8. *Secondly*, That theſe words, "being thereof lawfully "convicted," are no more than the law would have implied, if they had not been expreſſed, and therefore operate nothing. From whence it follows, that they neither cauſe the party to forfeit any thing by a conviction, unleſs judgment be given thereon, nor reſtrain the forfeiture to ſuch offences only, as are committed after a previous conviction, inaſmuch as they mean no more than what the law provides of common right in every caſe, *viz.* That the party ſhall forfeit nothing till he be convicted.

11 Co. 58. 60. 1 Roll 89, 90.

Sect. 9. *Thirdly*, That he who is condemned on demurrer, or *nihil dicit*, is ſufficiently convicted within the act; for whoever

ever is adjudged, is convict, though it follow not that every one, who is convict, is adjudged, &c.

Sect. 10. *Fourthly*, That one, who was ſick for part of the time contained in an information upon this ſtatute, ſhall not be at all excuſed by reaſon of ſuch ſickneſs, if it be proved that he was a recuſant, both before and after; for it ſhall be intended that he obſtinately forebore during that time. C. Jac. 529.

Sect. 11. *Fifthly*, That the time of a month, intended by the ſtatute ſhall be computed not by the kalendar, but by the number of days, allowing 28 days to each, according to the common rule of expounding ſtatutes, which ſpeak generally of a month. Yelv. 100. Eliz. 835. 2 R. Abr. 521. Cawley 61.

A feme covert is within the 1 & 23 of Eliz. and an information lies againſt the huſband. C. Jac. 529.——*Sed. vide* Sav. 25.

Sect. 12. Thirdly, The forfeiture of twenty pounds for the abſence of every month after a conviction, depends upon 28th commonly called 29 Eliz. c. 6. ſ. 4. & 3 Jac. 1. c. 4. ſ. 8. 3. by which it is enacted, "That every offender being convicted "of not coming to church, contrary to the purport of the ſta- "tutes above mentioned, ſhall pay twenty pounds for every "month after ſuch conviction, until he ſhall conform himſelf, "and come to church." 3 Lev. 333. Lut. 203. 1117. 2 Mod. 240. 1 And. 294. 11 Co. 63. 3 Keb. 742. 1 Ver. 143. 2 Ver. 711. L. Ray. 77. 210, 343. 371. 382. 1224.

Sect. 13. As to the ſecond branch of this head, *viz.* What forfeiture of lands and goods ſuch offenders are liable to, the ſame depends alſo upon 29 Eliz. c. 6. ſ. 4. and 3 Jac. 1. c. 4. ſ. 8, 9. by which it is enacted, "That if the offender ſhall "make default of payment of the twenty pounds, both for every "month contained in the conviction, and alſo for every month "ſubſequent, during which he ſhall not conform himſelf to the "church, the king ſhall take, ſeize and enjoy all his goods, "and two parts of his hereditaments, leaſes and farms, leaving "the third part only of the ſame hereditaments, leaſes and "farms, to and for the maintenance and relief of the ſame "offender, his wife, children, and family, notwithſtanding any "prior conveyance thereof made by ſuch offender, with power "of revocation, or to the uſe of himſelf or his family." 29 Eliz. 6. ſ. 1, 8.

Alſo by the ſaid ſtatute of 3 Jac. 1. c. 4. ſ. 11. "The king "may refuſe the penalty of twenty pounds a month, though it "be tendered according to law, and thereupon ſeize two parts "of all the hereditaments, leaſes and farms, which at the time "of ſuch ſeizure ſhall be, or afterwards ſhall come to any ſuch "offender, or to any other to his uſe, or in truſt for him, or at "his diſpoſition, or whereby or in conſideration whereof he or "his family ſhall be relieved, maintained or kept, leaving unto "him his chief manſion-houſe, as part of his third part."

Sect. 14. In the conſtruction of theſe ſtatutes the following points have been reſolved: *Firſt*, That the king by making his election given him by 3 Jac. 1. to ſeize the offender's heredi- 1 Jones 24, 25, Cawl. 271, 172.

taments,

taments, &c. waves the benefit of the twenty pounds a month, and the power of seizing the offender's goods.

12 Co. 1, 2. 1 Leon. 93. 1 Roll. 7.

Sect. 15. *Secondly*, That a recognizance or bond taken by such offenders, either in their own names or in the names of others to their use, are within the statute of the 29th of Elizabeth. For the words thereof to this purpose, are, "That the king shall "take, seize, and enjoy all the goods, &c." which in an act of parliament will include the whole personal estate; and though a *chose in action* cannot properly be said to be taken or seized, yet may it properly enough be said to be enjoyed.

Owen 37. 1 Leon. 97. Cawl. 107.

Sect. 16. *Thirdly*, That no copyhold lands are within 29 Eliz. (and by the same reason it seemeth that they are not within 3 *Jac.* 1.) in respect of the prejudice which would accrue to the lord by the loss of his services, *&c.*

C. Eliz. 845. 2 Roll. 25. Palm. 41. W. Jones 24.

Sect. 17. *Fourthly*, That the profits of the land seized by the king by force of 29 Eliz. for the non-payment of the twenty pounds a month, ought not to be applied to the satisfaction thereof, but that the lands ought to remain in the king's hands by way of pledge, till the whole forfeiture be paid some other way. But this construction of the statute seeming over severe, it was provided by 3 Jac. 1. c. 4. s. 5. "That the profits of "the said lands should go towards the satisfaction of the twenty "pounds."

Lane 105, 106. Cawl. 169. 12 Co. 1. 2.

Sect. 18. It hath been questioned, whether an estate conveyed by another in trust for a recusant, be liable to be seized by force of the said statute of 29 Eliz. because it expressly avoids such conveyances only as are made by the recusant himself *to his own use*, &c. And perhaps if it shall plainly appear, that an estate is settled *bona fide* in trust for a recusant, by some friend of his, upon some other view, and not merely with an intent to evade the statute, it may be reasonable to exempt such a conveyance out of the meaning of it; however it is clear from the express words of 3 Jac. 1. c. 4. s. 11. "That the king, upon his waving the forfeiture of the twenty "pounds a month, may seize two parts of all the hereditaments, "*&c.* which shall come to any such offenders, or to others to "their use, or in trust for them:" Also it is said, that the king may seize an estate, which is granted to a recusant in trust for another; and it is certain that the statute has made no express provision for the *cestui que trust*,

Lane 39.

As to the second general head of this chapter, *viz.* in what manner offenders of this nature are to be proceeded against for the forfeitures above mentioned, I shall consider, First, How they are to be proceeded against for the said forfeitures of money. Secondly, In what manner for the said forfeitures of lands and goods.—As to the prosecution for the said forfeitures of money, I shall shew, 1. How they are to be proceeded against for the said forfeiture of twelve-pence for the absence of every Sunday, *&c.* and, 2. In what manner for

for the ſaid forfeiture of twenty pounds for the abſence of every month contained in a conviction, and 3. In what manner for the ſaid forfeiture of twenty pounds far the abſence of every month after a conviction.

Sect. 19. And firſt, as to the recovery of the ſaid forfeiture of twelve pence for the abſence of every Sunday. It was enacted by 1 Eliz. c. 2. "That the ſame ſhould be levied by the "church-wardens of the pariſh where ſuch offence ſhould be "done, to the uſe of the poor of the ſame pariſh, of the goods, "lands, and tenements of ſuch offenders, by way of diſtreſs:" But this being defective in not ſhewing by whom, or in what manner ſuch offenders ſhould be convicted, or by whom the warrant for levying the ſaid forfeiture ſhould be granted, it was farther enacted by 3 Jac. 1. c. 4. ſ. 27. "That it ſhall be "lawful for any one juſtice of the peace of the limit, diviſion or "liberty, wherein the ſaid party ſhall dwell, upon the confeſſion "of the party, or the oath of one witneſs, to call the ſaid party "before him, and if he ſhall not make a ſufficient excuſe, and "due proof thereof, to the ſatisfaction of the ſaid juſtice of peace, "that it ſhall be lawful for the ſaid juſtice of peace to make a "warrant to the church-warden of the ſaid pariſh, where the "ſaid party ſhall dwell, to levy twelve pence for every ſuch "default, by diſtreſs and ſale of the offender's goods, rendering "the overplus to the ſaid offender; and that in default of ſuch "diſtreſs, it ſhall be lawful for the ſaid juſtice of peace to com-"mit every ſuch offender to priſon, until the ſaid forfeiture ſhall "be paid, which ſhall be employed to the uſe of the poor of "the pariſh, wherein the offender ſhall be reſident or abiding "at the time of the offence."

Sect. 20. As to the ſecond point, *viz.* In what manner the ſaid offenders are to be proceeded againſt for the ſaid forfeiture of twenty pounds for the abſence of every month contained in a conviction, I ſhall conſider. Firſt, In what manner the ſame may be recovered at the ſuit of the king. Secondly, In what manner at the ſuit of an informer.—And firſt, as to the recovery hereof at the king's ſuit, I ſhall conſider. 1. In what manner it may be recovered at the king's ſuit by way of indictment. 2. In what manner by way of action or information.

Sect. 21. And firſt, as to the recovery hereof at the ſuit of the king by way of indictment, it was enacted by 23 Eliz. c. 1. ſ. 9. "That the juſtices of oyer, aſſize, goal-"delivery, and quarter ſeſſions of the peace, might enquire "of and determine theſe offences, within one year and a day:" But by 29 Eliz. c. 6. ſ. 2. it was ordained. "That all ſuch "convictions ſhould be in the King's Bench, or at the aſſizes, "or general goal-delivery, and not elſewhere:" However by

1 Roll. 94. 11 Co. 63. Cawl. 66, 67. 82, 83.

3 Jac.

3 Jac. 1. c. 4. ſ. 7. the juriſdiction of the ſeſſions is revived.

Precedent Lut. 203, 1101.

Sect. 22. Alſo it is farther enacted by 29 Eliz. c. 6. ſ. 5. and 3 Jac. 1. c. 4. ſ. 7. "That upon an indictment, at the "aſſizes, goal-delivery, or general ſeſſions of the peace, pro- "clamation ſhall be made that the offender render himſelf to "the ſheriff before the next aſſizes, goal-delivery or ſeſſions; "and that if he ſhall not then appear of record, upon ſuch de- "fault recorded, the ſame ſhall be a conviction in law, as if a "trial by verdict on the indictment had been recorded." And

Salk. 145.

by ſ. 9. "Every ſuch conviction ſhall be certified into the Ex- "chequer, &c."

1 Vern. 355. Ray. 434.

Sect. 23. In the conſtruction hereof it hath been reſolved, *Firſt*, That ſuch a conviction ſhall not be looked on as a judgment; for the words are, "It ſhall be a conviction in law, as "if a trial, &c. had been recorded:" And conſequently that it cannot be reverſed by writ of error, which cannot be brought on any record, which is not a judgment, and therefore that the

Vide Salk. 145. 11 Co. 65. Inf. ſ. 42.

party has no other remedy againſt an inſufficient conviction, but to remove it into the Exchequer, and quaſh it there. Alſo upon the ſame ground it has been holden, that a forfeiture due to the king, by force of ſuch a conviction, ſhall not be taken to be within the exception of a general pardon, which excepts all forfeitures, *&c.* converted to a debt by judgment.

Palm. 40, 41. Bridg. 123. 3 Lev. 333. Lut. 1117.

Sect. 24. *Secondly*, That if the proclamation do not purſue the ſtatute, as if it appoint that the body ſhall be rendered at next ſeſſions, *&c.* whereas by the ſtatute it ought to order a render to the ſheriff, and that before the next ſeſſions, the conviction is inſufficient.

Cawley 164. Pop. 29. Keilw. 180.

Sect. 25. *Thirdly*, That an actual perſonal appearance of the defendant at the next ſeſſions, *&c.* will no way avail him, unleſs the ſame be entered of record.

Sect. 26. It hath been holden, That a man cannot be convicted by force of this ſtatute upon a default on a proclamation, *&c.* in the King's Bench; becauſe this court is not mentioned in the ſtatute.—But perhaps this opinion may juſtly be queſtioned, becauſe the court of King's Bench being the ſupreme court of aſſize, and gaol-delivery, *&c.* in the county where it ſits, it ſeems that a ſtatute, by giving any power to the courts of aſſize or goal-delivery, does impliedly give the ſame to the court of King's Bench, unleſs it have ſome reſtrictive words to the contrary,

Hob. 205.

Sum. 156. C. Car. 465. 2 Lev. 179. 2 Mod. 128, 129.

Sect. 27. If the defendant do appear, there is no doubt but that the proceedings ought to be according to the common courſe of law upon other indictments in all reſpects, except thoſe which are within the reſtraint of 3 *Jac.* 1. *c.* 4. ſ. 16, 17. by which it is enacted, "That no ſuch indictment, "nor any proclamation, outlawry or other proceeding there- "upon, ſhall at any time hereafter be avoided, diſcharged or "reverſed

" reverſed, by reaſon of any default in form or lack of form, or " other defect whatſoever, (other than by direct traverſe to the " point of not coming to church, *&c.*) but the ſame indictment " ſhall ſtand in force and be proceeded upon; any ſuch default " of form, or other defect whatſoever notwithſtanding, unleſs " the party ſo indicted ſhall conform, *&c.* C. Car. 504. Raym. 434.

Sect. 28. However it hath been reſolved, *Firſt*, That the party is only reſtrained from taking advantage of defects in the record itſelf, and that he may plead any collateral matter, as a pardon, or *autrefoits convict*, &c. 11 Co. 59. 65. 1 Roll. 95. C. Jac. 480. 482.

Sect. 29. *Secondly*, That he may even reverſe a judgment after verdict for any ſuch defect in the record iſelf, as tends to the king's prejudice, as the omiſſion of a *capiatur*, *&c.* And that he may reverſe an outlawry for any common defect, upon putting in bail, and traverſing the indictment as to the point of not coming to church, which is very agreeable to the purport of the whole clauſe, the latter part whereof ſeems manifeſtly to qualify the generality of the former. C. Car. 504. 505. Show. 309. 5 Mod. 141. 3 Keb. 591.

Sect. 30. Secondly, As to the recovery of the ſaid forfeiture by way of action or information at the king's ſuit, it was enacted by 35 Eliz. c. 1. ſ. 10. " That all and every the ſaid pains, " duties, forfeitures, and payments, ſhall and may be recovered " and levied to her majeſty's uſe, by action of debt, bill, plaint, " information or otherwiſe, in any of the courts commonly called " the King's Bench, Common Pleas, or Exchequer, in ſuch " ſort and in all reſpects, as by the ordinary courſe of the com- " mon laws of this realm, any other debt due by any ſuch per- " ſon in any other caſe ſhould or may be recovered or levied, " wherein no eſſoin, protection or wager of law ſhall be admitted " or allowed."

Sect. 31. It is ſaid, That the principal end of making this clauſe, was to enable the queen to proceed againſt the huſband for the recuſancy of his wife, which ſhe could not do by virtue of any of the former ſtatutes, by which ſhe had no other way of proceeding but by indictment, and conſequently could not charge the huſband for the forfeiture of the wife, becauſe ſhe could not make him a party to the ſuit, as ſhe may by force of this ſtatute. However, it is ſaid, that on a conviction of the wife upon an indictment, the lands and leaſes, which the huſband has in her right, may be ſeized by the Exchequer-proceſs. 11 Co. 61. 62. Vide ſup. c. 1. ſ. 13. C. Jac. 482. Bridgm. 122. ſeems contra.

Sect. 32. As to the ſecond particular, *viz.* In what manner an informer may proceed for the forfeitures aforeſaid. It is enacted by 23 Eliz. c. 1. ſ. 11. " That all forfeitures of " any ſums of money limited by that act, ſhall be divided into " three equal parts, whereof one third ſhall be to the queen, " to her own uſe, one other third to the queen, for the relief " of the poor in the pariſh where the offence ſhall be com- " mitted, to be delivered by the warrant of the principal " officers in the receipt of the Exchequer, without further " warrant 2 Leon. 167. & 29 Eliz. 6. 7.

" warrant from her Majeſty; and the other third to ſuch perſon
" as will ſue for the ſame, in any court of record, by action of
" debt, bill, plaint, or information, in which ſuit no eſſoin,
" &c. ſhall be allowed; and that every perſon which ſhall for-
" feit any ſums of money by virtue of that act, and ſhall not be
" able, or ſhall fail to pay the ſame within three months after
" judgment thereof given, ſhall be committed to priſon, there
" to remain until he have paid the ſame ſums, or conform him-
" ſelf to go to church, and there do as is aforeſaid."

Sect. 33. It has been objected, that this cauſe ſhall not extend to the ſaid forfeiture of twenty pounds a month for not coming to church, becauſe the ſame is by the former part of this ſtatute given expreſsly to the queen, whereas the forfeitures for ſaying or hearing maſs, and keeping an unlicenſed ſchool-maſter, are inflicted by the ſame ſtatute indefinitely, and not expreſsly given to any one. From which it is argued that this latter clauſe of diſtribution ought only to be applied to the ſaid indefinite clauſes, and not to take from the queen any part of that, which was expreſsly given her before. Yet it has been anſwered and reſolved, that it ſhall equally extend to all; for the limitation of the forfeiture to the queen is mere ſurplus and no more than the law would have implied, & *expreſſio eorum quæ tacite inſunt, nihil operatur*

11 Co. 58.
See 3 & 6 Par.
1 Roll. 89.
11 Co. 58.

Sect. 34. Alſo it has been reſolved, that an informer may ſue, not only for the third part which belongs to him, but for the whole penalty in the behalf of himſelf and the king, and that the judgment ſhall be that they ſhall recover &c.

1 And. 139, 140.
B. 2. c. 26. ſ. 76.

Sect. 35. Alſo it has been adjudged, that neither the above mentioned clauſe of 29 Eliz. c. 6. which orders, That all convictions upon 23 Eliz. ſhall be certified into the Exchequer, and alſo that the offender ſhall pay to the queen twenty pounds for every month contained in the indictment, &c. nor the ſaid clauſe in the 35 Eliz. c. 1. by which it is enacted, That all the ſaid pains, &c. ſhall be recovered to the queen's uſe, do take away the ſuit of the informer, againſt one not proceeded againſt by the king, or the third part of the penalty given him by 23 Eliz.

Sup. ſ. 13. 33.
11 Co. 61, 62.
1 Roll. 92, 93.

For the plain purport of both theſe acts is to further the puniſhment of recuſants, and therefore, inaſmuch as they are in the affirmative, and conſiſtent with 23 Eliz. they ſhall not be conſtrued to abrogate any part of it.

Sect. 36. Moreover it is manifeſt, that 29 Eliz. c. 6. extends only to the king's ſuit by indictment, for the word indictment is mentioned almoſt in every clauſe.

Sect. 37. And it alſo follows from hence, that the ſecond paragraph of the ſaid ſtatute of 29 Eliz. which enacts, That convictions for this offence ſhall be only at aſſizes, gaol delivery, or the King's-Bench, reſtrains only convictions upon indictments, and conſequently does not any away impeach

Hob. 205.
Con. 11 Co. 61.

he juriſdiction of the Common Pleas or Exchequer, as to informations, &c.

Sect. 38. It ſeems the better opinion upon comparing all the books together, which differ much from one another both in ſtating the caſes, and giving the reaſons of the judgments relating to this matter, that a conviction at the king's ſuit, whether ſtrictly regular or erroneous, may be pleaded to a ſuit by an informer, becauſe, while it ſtands in force, it makes the party liable to the forfeiture of twenty pounds a month, and no one ought to be puniſhed twice for the ſame offence. But it hath been reſolved, that an erroneous, and ſtrongly holden, that a regular conviction, by proclamation cannot be pleaded to a new ſuit by the king, becauſe ſuch a conviction is of no greater effect than a conviction by verdict, and conſequently the king may wave it and begin anew.

11 Co. 59. 65. B. 2. c. 26. ſ. 63. Lutw. 208. 1 Roll. 93. C. Jac. 481. Noy. 117. Lane 60. Palm. 39, 40, 41. 2 Roll. 108. Bridg. 122.

Sect. 39. But it ſeems very doubtful, whether the conviction of a feme covert upon an indictment can be pleaded to an information againſt her and her huſband, becauſe the huſband is not liable to pay the forfeiture recovered upon an indictment.

C. Jac. 482. Bridg. 120. 122. 2 Roll. 108. Vide ſup. c. 1. ſ. 13.

Sect. 40. It ſeems that the ordinary method of recovering the ſaid forfeiture of twenty pounds for every month contained in a conviction, either at the ſuit of the king, or of an informer, may ſufficiently appear from what has been already ſaid; but there is an extraordinary remedy provided by the ſame ſtatute of 29 Eliz. c. 6. to enforce the party to take care of the payment of the forfeiture of the twenty pounds for every month contained in an indictment, whereon he ſhall be convicted, by making his lands and goods liable to be ſeized by the king for the non-payment thereof into the Exchequer, upon ſuch of the terms of Eaſter or Michaelmas, as ſhall be next after his conviction. But this extends not to a conviction by way of action, or information, as more fully appears from the two next ſections.

1 Bac. Abr. 294.

Sect. 41. As to the third point, *viz.* in what manner the forfeiture of twenty pounds for the abſence of every month after conviction is to be recovered. It ſeems needleſs to enquire how far it may be recovered by an action or information for it at the king's-ſuit, inaſmuch as the ſaid ſtatutes of 29 Eliz. c. 6. & 3 Jac. 1. have made a moſt effectual proviſion for the payment of it, by expreſsly enacting, "That every ſuch offender, being once convicted, ſhall for every month after ſuch conviction, without any other indictment or conviction, pay into the Exchequer twice in the year, *viz.* in every Eaſter and Michaelmas term, as much as ſhall then remain unpaid, after the rate of twenty pounds for every month after a conviction, and that for a default herein the king may ſeize all the goods, and two parts of the hereditaments of ſuch an offender, &c."

Sect.

Cawl. 102, 103. *Sect.* 42. But it ſeemeth that theſe clauſes extend not to any conviction upon an information, or action, &c. but only to a conviction upon an indictment; for there is no other ſuit referred to beſides that of indictment. Alſo it is ſaid, that the ſaid clauſes extend to no convictions by verdict or otherwiſe, unleſs judgment be given thereon; becauſe, till then nothing is forfeited. And from the ſame ground it ſeems to follow, that they would not have extended to a conviction by default upon proclamation, if there had been no other words in the ſtatute to this purpoſe, than thoſe by which it is enacted, "That ſuch a default recorded ſhall be as ſufficient a conviction in law of the "ſaid offence, whereof the party ſtandeth indicted, as if upon "the ſame indictment a trial by verdict thereupon had proceeded "ed and been recorded," which words of themſelves can by no means make ſuch a conviction amount to a judgment after verdict, without which there can be no forfeiture upon any other conviction; and therefore it ſeemeth that the forfeiture cauſed by ſuch a conviction muſt depend upon the other clauſes of the ſaid ſtatutes, and the conſtant tenor of our law books, which ſeem to ſuppoſe that a perſon ſo convicted ſhall be liable to the ſaid forfeitures, as much as one, againſt whom a judgment is expreſsly given.

Vide ſup. ſ. 8.

Vide inf. ſ. 56.

See 29 El. 6. ſ. 6.

3 Jac. 1. c. 4. ſ. 7, 8, 9.

Caw. 103, 104.

Sect. 43. As to the ſecond general branch of this head, viz. In what manner offenders of this nature are to be proſecuted for the forfeiture of lands or goods. It appeareth from the 13th, 14th, 15th, 17th, 18th, 40th and 41ſt ſections of this chapter, that the king hath his election either to ſeize all the goods and two parts of the hereditaments and leaſes of the offender upon his making default in the payment of twenty pounds, both for every month contained in an indictment, whereon, he ſhall be convicted, and alſo for every month ſubſequent, or elſe to refuſe the ſaid penalty of twenty pounds a month, and thereupon to ſeize two parts of the hereditaments and leaſes of the offender.

Sect. 44. It alſo appeareth from what hath been ſaid in the forty-ſecond ſection of this chapter, that the king hath this advantage of ſeizing the lands and goods of the offender upon no other conviction, but ſuch as followeth an indictment, nor even upon ſuch a conviction without a judgment, unleſs it be cauſed by a default upon a proclamation. Therefore I ſhall add no more to this head, except theſe two following obſervations:

2 Inſt. 573. 8 Co. 169. Plow. 486.

Sect. 45. *Firſt*, That the king cannot ſeize the lands, &c. it appears by the return of an inquiſition to that purpoſe to be awarded, of what lands, &c. the offender was ſeized, becauſe the king's title to lands ought always to appear of record.

Sect. 46. *Secondly*, That the king, according to the better opinion, may ſeize the goods, but not grant them over, without ſuch an inquiſition. B. Cor. 2. 14. 25. 45. 47. 55. 60. 1 Rol. 7. 2 R. Ab. 184.

Sect. 47. As to the third general head of this chapter, *viz.* What diſabilities and other inconveniencies, offenders of this kind are liable unto, it is enacted by 3 Jac. 1. c. 5. ſ. 8. "That no recuſant convict ſhall practiſe either the common or civil law, or phyſick, or uſe the trade of an apothecary, or be judge or miniſter of any court, or bear any office in camp, troop, or company of ſoldiers, or in any ſhip, or fortreſs, but ſhall be utterly diſabled for the ſame, and forfeit for every ſuch offence one hundred pounds."

Sect. 48. Alſo it is farther enacted by the ſaid ſtatute of 3 Jac. 1. c. 5. ſ. 22. "That ſuch recuſants, as ſhall be convicted at the time of the death of any teſtator, or at the time of granting of any adminiſtration ſhall be diſabled to be executors or adminiſtrators; and that no ſuch perſons ſhall be guardians to any child, &c."

Sect. 49. And it is enacted by 23 Eliz. c. 1. "That every perſon forbearing the church twelve months, ſhall on certificate thereof into the King's Bench by the ordinary, a juſtice of aſſize and goal-delivery, or a juſtice of peace of the county where ſuch offender ſhall dwell or be, be bound with two ſufficient ſureties in the ſum of two hundred pounds at the leaſt to the good behaviour, and ſo continue bound until ſuch offender ſhall conform himſelf, &c."

Sect. 50. As to the fourth general head of this chapter. *viz.* by what means offenders of this nature may be diſcharged from the ſaid forfeitures, &c. it is enacted by 23 Eliz. c. 1. ſ. 10. That every perſon guilty of the above-mentioned offences, who ſhall, before he be thereof indicted, or at his arraignment or trial before judgment, ſubmit and conform himſelf before the biſhop of the dioceſe where he ſhall be reſident, or before the juſtices where he ſhall be indicted, arraigned, or tried, (having not before made like ſubmiſſion at any his trial, being indicted for his firſt like offence,) ſhall upon his recognition of ſuch ſubmiſſion in open aſſizes, or ſeſſions of the county where ſuch perſon ſhall be reſident, be diſcharged of all and every the ſaid offences againſt the ſaid ſtatute, &c."

Sect. 51. Alſo it is enacted by 29 Eliz. c. 6. ſ. 6. "That whenſoever any ſuch offender ſhall make ſubmiſſion, and become conformable, according to the form limited by the above mentioned ſtatute of 23 Eliz. c. 1. or ſhall fortune to die, that then no forfeiture of twenty pounds for any month, or ſeiſure of the lands of the ſame offender, from and after ſuch ſubmiſſion and conformity, or death, and full ſatisfaction of all the arrearages of twenty pounds "monthly,

" monthly, before such seizure due or payable, shall ensue, o
" be continued against such offender, so long as the same perso
" shall continue in coming to divine service, according to the in
" tent of the said statute."

Sect. 52. But this statute being thought not to give sufficien encouragement to such persons to conform to the church, be cause by the most favourable construction that could be made it still obliged them to pay such debts as were due to the king b

1 Roll. 94. force of a judgment, it was enacted by 1. Jac. 1. c. 4. s. 2 " That a recusant, conforming himself according to the mean " ing of the above mentioned statutes, &c. shall, during such " conformity, be discharged of all penalties, which he might " otherwise sustain by reason of his recusancy."

Raym. 391. 465. 2 Jon. 187. 1 Mod. 213. 1 Roll. 95. 2 Bulst. 324.

Sect. 53. And it hath been resolved, that such conformity may, by force of this statute, be pleaded, as well to the suit of an informer as to that of the king; and that after judgment it will be a good ground for an *audita querela* against an informer; and also may be pleaded against the king before execution awarded.

Savil. 130. 2 Show. 331.

Sect. 54. However, there seems to be no remedy for such a person to get a restitution of such of the profits of his lands as have been actually taken by the king.

Lane 92, 93. 106. Cawley 109. 110.

Sect. 55. It seemed very doubtful, before 1 Jac. 1. c. 4 how far the lands of an heir were chargeable with the forfeitures incurred by his ancestor in respect of his recusancy; but this seems to be for the most part cleared by the 3d, 4th and 5th paragraphs of that statute, by which it is enacted, " That " the heir, if he be not recusant, or were such, and conform " shall be freed from all penalties happening upon him by rea " son of his ancestor's recusancy, unless the two parts of the " lands were seized by the king in the ancestor's life, in which " case they shall continue in the king's hands till the whole " debt shall be levied. But it is farther enacted, that the king " shall not extend the other third part of the lands for the said " penalty."

Sect. 56. It seems by the manifest purport of this statute that the heir of a recusant, being also a recusant himself, has no remedy, but by conforming, to free his fee-simple lands from any of the forfeitures incurred by the conviction of his ancestor, whether the lands were seized in the ancestor's life or not.

Moor 523. 1 Roll. 94. C. Eliz. 846. Cawl. 109. 110, 150, 151, 152.

However it is said, that the lands in fee-tail, which he claims from such ancestor, is no way chargeable after the death of the ancestor, with any forfeitures upon a conviction by proclamation (which has no greater effect than a verdict recorded) but only with such, as are due upon a judgment; which as it is agreed charge an heir in tail by force of 33 Hen. 8. c. 39. s. 29. which makes an heir chargeable with the debts of his ancestor by judgment, recognizance, obligation, or other specialty. But perhaps, the authority of those opinions may justly be questioned

Fo

r though a conviction by proclamation amount not to a judg-
ent, yet surely it cannot be inferior to an obligation. And, Vide sup. f. 32.
erefore, perhaps, the books cited in the margin are misreport-
in this particular, and the more proper distinction may be
is; that an heir in tail is chargeable only with the forfeitures
those months, which are contained in the indictment itself, on
hich a judgment is afterwards given, or a conviction by pro-
amation recorded, and not for the months subsequent to such
nviction, or proclamation, inasmuch as the first seem to be
bts appearing of record, the latter not. And the same dis-
ction seems applicable to such lands in tail of an heir who
nforms, as were seized in the ancestor's life; but it is clear
at such only of his lands as were so seized are in any case
ble, whether he claim them in fee-simple or tail.

CHAPTER THE ELEVENTH.

THE OFFENCES OF SUFFERING OTHERS TO BE ABSENT FROM CHURCH.

HAVING shewn how far all persons in general are 4 Can. 52.
punishable for their own absence from the church, I am 3 Burn. E. L.
w to shew how far they may be punished for the absence of 220.
hers; as to which it is enacted by 3 Jac. 1. c. 4. f. 32, 33,
. "That whosoever shall retain or keep in his service, fee
or livery, or shall willingly maintain, retain, relieve, keep,
or harbour, in his house, any servant, sojourner, or stranger
(except a father, or mother wanting, without fraud, or covin,
other habitation, or sufficient maintenance, and also except a
ward, or person committed to the custody of another by au-
thority) who shall not go to some church or chapel, or usual
place of common prayer, to hear divine service, but shall
forbear the same for the space of one month, &c. shall for
every month, that he shall keep such servant, &c. forfeit ten
pounds."

CHAPTER THE TWELFTH.

OF POPISH RECUSANCY.

AND now we are come to offences against the established
church more immediately relating to those of the popish
ligion.

For the better understanding whereof I shall consider: First,
he above mentioned offence of not coming to church, so far as
particularly concerns those of this persuasion. Secondly,
he offence of saying or hearing mass, or other popish service.
hirdly, The offence of not making a declaration against
popery.

popery. Fourthly, The offence of promoting or encouraging the popish religion.

Skin. 99. Keb. 7. 3 Burn. E. L. 120.

And first as to the said offence of not coming to church, so far as it particularly concerns those of the popish religion; who in respect hereof are commonly called popish recusants. I shall consider, *First*, How far such recusants are punishable in their own persons. *Secondly*, How far they make others liable to be punished.

As to the first of these points, *viz.* How far such recusants are punishable in their own persons. It is to be observed, that they are not only liable to all the forfeitures and disabilities and other inconveniencies mentioned in chap. 10. but also to many particular disabilities, restraints and forfeitures, and other inconveniencies to which no others are liable.

First they are put under the following disabilities. 1. That of bringing an action. 2. That of presenting to a church. 3. That of bearing any public office, or charge. 4. That of claiming any part of a husband's personal estate. 5. That of claiming an estate by courtsey, or by way of dower, after a marriage against law.

Secondly, They are put under the following restraints. 1. From going above five miles from home. 2. From coming to court. 3. From keeping arms. 4. From coming within ten miles of London.

Thirdly, They are liable to the following forfeitures. 1. That of two parts of a jointure or dower. 2. That of twenty pounds for not receiving the sacrament yearly after conformity. 3. That of one hundred pounds for an unlawful marriage. 4. That of one hundred pounds for an omission of lawful baptism. 5. That of twenty pounds for an unlawful burial.

Lastly, They are subject to the following inconveniencies. 1. That their houses may be searched for reliques, whether they be men or women. 2. If they be women and married that they may be committed, &c.

Sect. 1. As to the first of the said disabilities, *viz.* That of bringing an action. It is enacted by 3 Jac. 1. c. 5. s. 12. "That every popish recusant convict shall stand to all intents and purposes disabled, as a person lawfully excommunicated, and as if such person had been so denounced and excommunicated according to the laws of this realm until he or she shall conform, &c. And that every person sued by such person so disabled, may plead the same in disabling of such plaintiff, as if he or she were excommunicated by sentence in the ecclesiastical court. Except the action of such recusant do concern some hereditam-

11 Mod. 357. 366.

"or leaſe, which is not to be ſeized into the king's hands by "force of ſome law concerning recuſancy." 4 Comm. 55. 124.

By 1 Jac. 1. c. 4. provided he conforms according to the meaning of the ſtatutes of 23 Eliz. c. 1. and 28 Eliz. c. 6. he ſhall during ſuch conformity, be diſcharged of all penalties which he might otherwiſe ſuſtain by reaſon of his recuſancy——For the pleading of which ſee Ray. 391. 2 Jones 187. Mod. 213.

Sect. 2. In the expoſition hereof it hath been reſolved, *Firſt*, That the plea of ſuch a conviction, like all other pleas in diſability, ought to be pleaded before imparlance, and alſo to conclude with a demand if the plaintiff ſhall be anſwered. Noy, 89. 3 Lev. 208. Latch. 176. Het. 18. Mod. Caſes in L. & E. 43. 381.

Sect. 3. *Secondly*, That ſuch plea ought alſo to ſhew before what juſtices the conviction was, that the court may know where to ſend for a certificate thereof, if it be denied; and alſo that the record itſelf, or at leaſt a certificate thereof, ought to be immediately produced, according to the general rule of the law, as to all dilatory pleas grounded upon records. Noy, 89. Latch, 176. 3 Lev. 333, 234.

Sect. 4. *Thirdly*, That if after ſuch a plea it be certified that the plaintiff hath conformed, and thereupon the defendant be ordered to plead in chief, and then the plaintiff relapſe and be convict again, the defendant cannot plead the ſame in diſability a ſecond time. Hetl. 176.

Sect. 5. *Fourthly*, That it muſt appear either from the conviction itſelf, or by proper averments, that the plaintiff is convicted of popiſh recuſancy, becauſe no recuſants, except popiſh ones, are within the ſaid clauſe; however that this is ſufficiently let forth by alledging that the plaintiff being *papales reſcuſans*, was indicted and convicted *ſecundum formam ſtatuti, &c.* 2 Lut. 1117. 3 Lev. 333, 334, 11, 12.

Sect. 6. And ſome have gone ſo far as to hold, that all popiſh recuſants convict may be taken up by the writ, *de excommunicato capiendo*, and that they are not to be admitted as competent witneſſes in any cauſe; but this ſeems to be a conſtruction over ſevere: for inaſmuch as this, like all other penal ſtatutes, ought to be conſtrued ſtrictly, and the words thereof are no more than, that ſuch perſons ſhall ſtand diſabled, &c. as perſons lawfully excommunicate, &c. and the purport thereof may be fully ſatisfied by the diſability to bring any action, it ſeems to be too rigorous to carry them farther. 2 Bul. 155, 156. The ſame point ſeems admitted, 1 St. Tr. 268. 3 St. Tr. 425. Cawley 216. Vide 1 Com. Dig. 10. as to pleading, and 4 Com. Dig. 65. as to the law in general upon this head.

Sect. 7. As to the ſecond of the ſaid diſabilities, *viz.* that of preſenting to a church, the ſame being at this day extended by 12 Ann. c. 2. to all perſons making profeſſion of the popiſh religion, I ſhall refer the reader, for the matters relating to this head, to chap. 15. wherein is ſhewn how penal it is, barely to profeſs the ſaid religion; and I ſhall only take notice in this place, that by 1 Will. & Mar. c. 26. §. 4. "If the truſtee, mortgagee, or grantee of any avoidance whereof the truſt ſhall be for any popiſh recuſant convict, ſhall 3 Burn. E. L. 252.

" preſent without giving notice in writing of the avoidance, to " the univerſity, &c. within three months after the avoidance, " he forfeits five hundred pounds."

16 Geo. 2. c. 30. ſ. 3. 20 Geo. 2. c. 52. ſ. 56.

Sect. 8. As to the third of the ſaid diſabilities, *viz.* that of bearing any public office or charge, it is enacted by 3 Jac. 1. c. 5. ſ. 9. " That no popiſh recuſant convict ſhall exerciſe " any public office or charge in the commonwealth, but ſhall " be utterly diſabled to exerciſe the ſame, by himſelf or his " deputy."

Sect. 9. It is obſervable, that this clauſe is more ſtrongly penned than that which immediately precedes it, relating to all recuſants in general, as to the following particulars: 1. That this extends to all public offices and charges in general, whereas the former extends only to thoſe which are particularly enumerated. 2. That this expreſsly diſables a popiſh recuſant to exerciſe ſuch an office by himſelf or his deputy, but the other ſays nothing at all of the exerciſe of an office by a deputy.

See alſo 7 J. 1. ch. 6.

Sect. 10. As to the fourth of the ſaid diſabilities, *viz.* That of claiming any part of a huſband's perſonal eſtate, it is enacted by 3 Jac. 1. c. 5. ſ. 10. " That every woman " being a popiſh recuſant convict (her huſband not ſtand- " ing convicted of popiſh recuſancy) which ſhall not con- " form herſelf and remain conform'd, but ſhall forbear to " repair to ſome church or uſual place of common prayer, and " there hear divine ſervice and ſermon, if any then be, and " receive the ſacrament of the Lord's ſupper, according to the " laws of this realm, by the ſpace of one whole year next " before the death of her ſaid huſband, ſhall not only be diſ- " abled to be executrix or adminiſtratrix of her ſaid huſband, " but alſo to have or demand any part of her ſaid huſband's " goods or chattels, by any law, cuſtom or uſage whatſoever." And by 3 Jac. 1. c. 5. ſ. 13. " Every woman is put under " the like diſability, being a popiſh recuſant, who ſhall be " married otherwiſe than according to the church of Eng- " land."

Vade the marriage acts 26 Geo. 2. c. 33. and 21 Geo. 3. c. 53.

Sect. 11. As to the fifth of the ſaid diſabilities, *viz.* that of claiming an eſtate by the courteſy, or by way of dower, &c. it is enacted by 3 Jac. 1. c. 5. ſ. 13. " That every man " who, being a popiſh recuſant convict, ſhall be married " otherwiſe than in ſome open church or chapel, and other- " wiſe than according to the orders of the church of England " by a miniſter lawfully authorized, ſhall be diſabled to have an " eſtate, as tenant by the courteſy; and that every woman " being a popiſh recuſant convict, who ſhall be married in " other form than as aforeſaid, ſhall be diſabled to claim her " dower or jointure, or widow's eſtate, &c".

Sect. 12. As to the firſt of the above mentioned reſtraints, *viz.* That from going above five miles from home, &c. it is enacted by 35 Eliz. c. 2. and 3 Jac. 1. c. 5. ſ. 6. 7. "That "every popiſh recuſant convict ſhall repair to his place of "dwelling, &c. and not remove above five miles from thence, "unleſs he be urged by proceſs, &c. or have a licence from "the privy council, &c. or under the hands and ſeals of four "juſtices of peace, with the aſſent in writing of the lieute- "nant of the county, or of the biſhop, &c. (every licence "of which kind by juſtices of peace muſt expreſs both the par- "ticular cauſe and the time for which it is given, and ought "not to be granted without a previous oath of ſome reaſonable "cauſe,) under pain of forfeiting all his goods and heredita- "ments, (whether freehold or copyhold,) for his life, or of "abjuring the realm, if he be not worth twenty marks a year, "or forty pounds in goods, unleſs he recant before conviction, "and alſo continue conformable." 3 Burn E. L. 162. 165. See Cawl. 128; 129, &c. 207, 208.

Sect. 13. Note, that the privy council may grant ſuch licence without any ſpecial cauſe or oath, &c. but that the juſtices of peace cannot. And it hath been reſolved, that in pleading a licence of juſtices of peace you muſt expreſsly ſhew that it was made under their hands and ſeals, and alſo ſet forth the cauſe in par icular for which it was granted, and the time for which it was limited, and that the party was ſworn to the truth of ſuch cauſe, &c. C. Jac. 352. 1 Rol. 108. Moor 836.

Sect. 14. It is ſaid, that if the ſame perſon be both a juſtice of peace and a lieutenant, he cannot both join in a licence as juſtice of peace, and alſo give his aſſent as lieutenant, but can only act in one capacity. C. Jac. 352. 1 Roll. 108. Moor 836.

Sect. 5. It ſeems that the miles ſhall be computed according to the Engliſh manner, allowing 5280 foot, or 1760 yards to each mile, and that the ſame ſhall be reckoned not by ſtrait lines, as a bird or arrow may fly, but according to the neareſt and moſt uſual way. Cawl. 130, 131 C. Eliz. 212.

Sect. 16. As to the ſecond of the above mentioned reſtraints, *viz.* That which relates to the coming to court, it is enacted by 3 Jac. 1. c. 5. ſ. 2. "That no popiſh recuſant convict "ſhall come into the court or houſe where the king or his heir "apparent ſhall be, unleſs he be commanded ſo to do by the "king, upon pain of one hundred pounds, &c." And it is farther enacted by 30 Car. 2. ſt. 2. ſ. 5, 6. "That every po- "piſh recuſant convict, who ſhall come adviſedly into, or re- "main in the preſence of the king and queen, or ſhall come "into the court or houſe where they or any of them reſide, ſhall "be diſabled to hold or execute any office or place of truſt civil "or military, or to ſue in law or equity, or to be an executor, &c. "or capable of any legacy or deed of gift, and ſhall forfeit for every "wilful offence five hundred pounds, unleſs ſuch perſon do within

" the term next after ſuch his coming or remaining, take the " oaths of allegiance and ſupremacy, and make the declaration " againſt tranſubſtantiation and the invocation of ſaints, &c. " in the court of chancery."

Sect. 17. As to the third of the above mentioned reſtraints, *viz.* That which relates to the keeping of arms, it is enacted by 3 Jac. 1. c. 5. ſ. 27, 28, 29. " That all ſuch armour, " gun-powder, and munition, of whatſoever kinds, as any " popiſh recuſant convict ſhall have in his own houſe or elſe- " where, or in the poſſeſſion of any other at his diſpoſition, " ſhall be taken from him by warrant of four juſtices of peace " at their General or Quarter Seſſions, except ſuch neceſſary " weapons as ſhall be allowed him by the ſaid four juſtices, " for the defence of his perſon or houſe) and that the ſaid " armour, &c. ſo taken, ſhall be kept at the coſt of ſuch " recuſant, in ſuch place as the ſaid four juſtices at their ſaid " ſeſſions ſhall appoint: and that if any ſuch recuſant having " ſuch armour, &c. or if any other perſon who ſhall have any " ſuch armour, &c. to the uſe of ſuch recuſant, ſhall refuſe to " diſcover to the ſaid juſtices, or any of them, what armour he " hath, or ſhall let or hinder the delivery thereof to any of the " ſaid juſtices, or to any other perſon authorized by their war- " rant to take the ſame, that then every perſon ſo offending " ſhall forfeit his ſaid armour, &c. and alſo be impriſoned for " three months without bail, by warrant from any juſtices of " peace of ſuch county." And it is further enacted, " That " notwithſtanding the taking away ſuch armour, &c. yet ſuch " recuſant ſhall be charged with the maintaining of the ſame, " and with the providing of a horſe, &c. in ſuch ſort as others " of his majeſty's ſubjects." Alſo it is further enacted by 1 W. & M. c. 15. " That no reputed papiſt refuſing to make the " ſaid declaration againſt popery, mentioned in 30 Car. ſhall " keep arms." As it is ſet forth more at large. chap. 14. ſect. 4.

Sect. 18. As to the fourth of the above mentioned reſtraints, *viz.* That which relates to the coming within ten miles of London, it is enacted by 3 Jac. 1. c. 5. ſ. 4, 5. " That no popiſh recuſant, &c. ſhall remain within the " compaſs of ten miles of London, under pain of one hun- " dred pounds, except ſuch perſons as, at the time of the " ſaid act, did uſe ſome trade, myſtery, or manual occupa- " tion in London, &c. and ſuch as ſhall have their only " dwelling in London, &c." Alſo reputed papiſts, refuſing to make the declaration mentioned in the precedent ſections are to be removed from London, &c. by force of 1 Will. & Mar. c. 9. which is ſet forth more at large in chap. 4. ſect. 3.

Sect.

Sect. 19. As to the firſt of the above mentioned forfeitures, *viz.* That of two parts of a jointure or dower, it is enacted by 3 Jac. 1. c. 5, ſ. 10. "That every married woman, being "a popiſh recuſant convict, (her huſband not ſtanding convicted "of popiſh recuſancy) who ſhall not conform herſelf and remain "conformed, but ſhall forbear to repair to ſome church or uſual "place of common prayer, and there to hear divine ſervice and "ſermon, if any then be, and receive the ſacrament of the Lord's "ſupper, according to the laws of this realm, within one year "next before the death of her ſaid huſband, ſhall forfeit to the "king the profits of two parts of her jointure and dower of any "hereditaments of her ſaid huſband, &c."

Sect. 20. As to the ſecond of the above mentioned forfeitures, *viz.* That of twenty pounds, &c. for not receiving the ſacrament yearly after conformity, it is enacted by 3 Jac. 1. c. 4. ſ. 2, 3, "That if any popiſh recuſant convict, who hath conform-"ed himſelf to the church, &c. ſhall not receive the ſacrament "in his own pariſh church, &c. within one year after his confor-"mity, he ſhall forfeit twenty pounds, and for the ſecond year "forty pounds, and for every year after ſixty pounds, &c."

Sect. 21. As to the third of the above mentioned forfeitures, *viz.* That of one hundred pounds for an unlawful marriage, it is enacted by 3 Jac. 1. c. 5. ſ. 13. "That every popiſh recu-"ſant convict, who ſhall be married to a woman who is no "inheritrix, otherwiſe than according to the church of England, "ſhall forfeit one hundred pounds."

Sect. 22. As to the fourth of the above mentioned forfeitures, *viz.* That of one hundred pounds for the admiſſion of a lawful baptiſm, it is enacted by 3 Jac. 1. c 5. ſ. 14. "That "every popiſh recuſant who ſhall not cauſe his or her child to "be baptized, within one month after its birth, by a lawful mi-"niſter, &c. ſhall forfeit one hundred pounds, &c."

Sect. 23. As to the fifth of the above mentioned forfeitures, *viz.* That of twenty pounds for an unlawful burial, it is enacted by 3 Jac. 1. c. 5. ſ. 15. "That if any popiſh recuſant, not "being excommunicate, ſhall be buried in any other place than "in the church or churchyard, or not according to the eccle-"ſiaſtical laws of this realm, the executors, &c. of ſuch recu-"ſant, knowing the ſame, or the party that cauſeth him to be ſo "buried, ſhall forfeit twenty pounds, &c."

Sect. 24. As to the inconvenience to which all ſuch offenders are liable, *viz.* That of having their houſes ſearched for reliques, *&c.* it is enacted by 3 Jac, 1, c. 5. ſ. 26. "That any two juſtices of peace, and all mayors, bailiffs,

"and

" and chief officers of cities and towns corporate, in their re-
" ſpective juriſdictions, may ſearch the houſe and lodgings of
" every popiſh recuſant convict for popiſh books and reliques:
" and that if any altar, pix, beads, pictures, or ſuch like po-
" piſh relique; or any popiſh book, be found in the cuſtody of
" ſuch perſon, as, in the opinion of the ſaid juſtices, &c. ſhall
" be unmeet for him or her to have or uſe, it ſhall be defaced
" and burnt, if it be meet to be burnt; and if it be a crucifix,
" or other relique of any price, the ſame ſhall be defaced at
" the General Quarter-Seſſions in the county where it ſhall be
" found, and then reſtored to the owner."

Sect. 25. As to the inconvenience to which ſuch offenders, being femes covert are liable, *viz.* That of being committed, it is enacted by 7 Jac. 1. c. 6. ſ. 28. " That if any married
" woman, being a popiſh recuſant convict, ſhall not within three
" months after her conviction, conform herſelf, and repair to
" church and receive the ſacrament, &c. ſhe may be com-
" mitted to priſon by one of the privy council, or by the biſhop,
" if ſhe be a baroneſs; or if under that degree by two juſtices
" of peace, whereof one to be of the *Quorum*, there to remain
" till ſhe perform, *&c.* unleſs the huſband will pay to the king
" ten pounds a month for her offence, or elſe the third part
" of all his lands, &c. at the choice of the huſband, &c.

Sect. 26. And now I am to conſider in the ſecond place, how far ſuch recuſants makes others liable to be puniſhed; as to which it is to be obſerved. That the huſband of a popiſh recuſant convict is not only liable to the forfeiture of ten pounds a month for the abſence of any of his ſervants from church, by force of 1 Jac. 1. which is ſet forth more at large in the foregoing chapter, but is alſo " utterly diſabled," by the ninth paragraph of the ſaid ſtatute, " to exerciſe any publick office or charge in the
" common-wealth by himſelf or by his deputy; (except ſuch
" huſband himſelf, and his children, which ſhall be above the
" age of nine years abiding with him, and his ſervants in the
" houſhold, ſhall once every month at leaſt, not having any rea-
" ſonable excuſe to the contrary, repair to ſome church or cha-
" pel uſual for divine ſervice, and there hear divine ſervice;
" and the ſaid huſband, and ſuch his children and ſervants, as
" are of meet age, receive the ſacrament of the Lord's ſupper
" at ſuch times as are limited by the laws of this realm, and do
" bring up his ſaid children in the true religion.")

Sect. 27. Alſo it is farther enacted by the ſaid ſtatute of 3 Jac. 1. c. 5. ſ. 26. " That the houſe of one whoſe wife
" is a popiſh recuſant convict, may be ſearched by any two
" juſtices of peace, &c. for popiſh books, &c."

CHA

CHAPTER THE THIRTEENTH.

OF OFFENCES IN SAYING OR HEARING MASS, OR OTHER POPISH SERVICE,

AS to the offence in saying or hearing maſs, it is enacted by 23 Eliz. c. 1. ſ. 4. "That every perſon, who ſhall ſay or ſing maſs, being thereof lawfully convict, ſhall forfeit two hundred marks, and be committed to priſon to the next goal, there to remain by the ſpace of one year, and from thenceforth till he have paid the ſaid ſum of two hundred marks; and that every perſon, who ſhall willingly hear maſs, ſhall forfeit the ſum of one hundred marks, and ſuffer a year's impriſonment." Dyer 203. 4 Comm. 56, 87. 115. 3 Jac. 1. ch. 5. 2 Show. 216.

Sect. 2. And it is enacted by 11 & 12 Will. 3. c. 4. ſ. 2, 3, 4. 5. "That every perſon, who ſhall apprehend any popiſh biſhop, prieſt, or jeſuit, and proſecute him to conviction for ſaying maſs, or exerciſing any other part of the function of a popiſh biſhop or prieſt, ſhall receive one hundred pounds of the ſheriff, and that every ſuch popiſh biſhop, &c. (except, being a foreigner, he be entered in the ſecretary's office, and officiate only in the houſe of a foreign miniſter,) ſhall be adjudged to perpetual impriſonment."

† But by 18 Geo. 3. c. 60. it is enacted "That the abovementioned clauſes of 11 & 12 Will. 3. are repealed." provided, by ſ. 5. "that ſuch popiſh biſhop, prieſt, jeſuit or ſchoolmaſter ſhall have taken and ſubſcribed the oath, (in the words as recited in the ſaid ſtatute of Geo. 3. before he ſhall have been apprehended, or any proſecution commenced againſt him."

CHATPER THE FOURTEENTH.

OF THE OFFENCE OF NOT MAKING A DECLARATION AGAINST POPERY.

THE offence of refuſing to make a declaration againſt ſome of the principal doctrines of the popiſh religion puts all perſons under the following reſtraints: Firſt, From ſitting in parliament. Secondly, From holding a place at court. Thirdly, From living within ten miles of London. Fourthly, From keeping arms. Fifthly, It puts them under diſability of preſenting to a church. A witneſs ſhall not be put to anſwer whether he is or is not a Papiſt. Dougl. 593.

Sect.

Sect. 1. As to the first of the above mentioned restraints, *viz.* That which relates to the sitting in parliament, it is enacted by 30 Car. 2. st. 2. c. 1. "That no peer shall vote or make "his proxy in the House of Peers, or sit there during any de- "bate; and that no member of the House of Commons, shall "vote or sit there during any debate after the Speaker is chosen, "until such peer or member shall take the oaths of allegiance "and supremacy, and make a declaration of his belief that "there is no transubstantiation in the sacrament of the Lord's "Supper; and that the invocation or adoration of the Virgin "Mary, or any other saint, and the sacrifice of the mass, as "they are now used in the church of Rome, are superstitious "and idolatrous, &c, on pain that every such offender shall be "adjudged a popish recusant convict, and disabled to hold or 1 Geo. 1. c. 13. "execute any office, &c. or from thenceforth to sit or vote in "either house of parliament, to sue in law or equity, or to be "guardian, executor or administrator, or capable of any le- "gacy or deed of gift, and shall forfeit for every wilful offence "five hundred pounds.

Sect. 2. As to the second of the above mentioned restraints, *viz.* That which relates to the holding a place at court, it is enacted by the said statute of 30 Car. 2 st. 2. s. 9. 12, 13. This clause is repealed by 2 Geo. 2. c. 31. s. 9. "That every person who shall be a sworn servant to the king, "shall take the said oaths, and make and subscribe the said "declaration in chancery, the next term after he shall be so "sworn a servant, &c. And that if any such person, neglect- "ing so to do, shall advisedly come into or remain in the pre- "sence of the king or queen, or shall come into the court or "house where they are or any of them reside, he shall suffer all "the penalties expressed in the foregoing section, unless such per- "son so coming into the king's presence, &c. shall first have li- "cence so to do, by warrant under the hands and seals of six pri- "vy counsellors, by order of the privy council, upon some "urgent occasion therein to be expressed, which licence shall "not exceed ten days, and shall be first filed, &c. in the petty- "bag office, for any body to view without fee, &c. and no "person be licensed for above thirty days in one year."

Sect. 3. As to the third of the above mentioned restraints, *viz.* That which relates to the living within ten miles of London, it is enacted by 1 Will. and Mar. c. 9. "That "every justice of peace in London and Westminster, and "within ten miles thereof, shall cause to be arrested, and "brought before him all reputed Papists (except foreigners, "being merchants or menial servants to some ambassador or "public agent, and except all such as used some trade, mys- "tery, or some manual occupation at the time of the said See ch. 12. s. 18. "act, in London, &c. and also except all such persons as "had

had their dwelling in London, &c. within ſix months before the thirteenth of February, 1688, and no dwelling elſewhere, and certified their names to the ſeſſions before the firſt of Auguſt, 1689) and that every ſuch juſtice ſhall tender the ſaid declaration to every ſuch perſon, and that every ſuch perſon refuſing the ſame, and afterwards remaining in London, &c. or within ten miles thereof, or being certified to the King's Bench or Quarter Seſſions, at the next term or ſeſſions, as having refuſed to make the ſaid declaration, and neglecting to make the ſame in ſuch court, ſhall ſuffer as a Popiſh recuſant convict, &c."

Sect. 4. As to the fourth of the above mentioned reſtraints, viz. That which relates to the keeping arms, it is enacted by Will. and Mar. c. 15. "That any two juſtices of the peace may and ought to tender the ſaid declaration to any perſon whom they ſhall know or ſuſpect, or have information of, as being a Papiſt, or ſuſpected to be ſuch; and that no ſuch perſon ſo required, and not making and ſubſcribing the ſaid declaration, or not appearing before the ſaid juſtices upon notices to him given, or left at his uſual abode, by one authorized by warrant under the hands and ſeals of the ſaid juſtices, ſhall keep any arms or ammunition, or horſe above the value of five pounds, in his own poſſeſſion, or in the poſſeſſion of any other perſon to his uſe (other than ſuch neceſſary weapons, as ſhall be allowed him by the Quarter Seſſions for the defence of his houſe or perſon) and that any two juſtices of peace, by warrant under their hands and ſeals, may authorize any perſon in the day time with the aſſiſtance of the conſtable or his deputy or the tithing-man, to ſearch for all ſuch arms, &c. and horſes, and ſeize them to the king's uſe; and that the ſaid juſtices ſhall deliver the ſaid arms and ammunition at the next Quarter Seſſions in open court; and that whoever ſhall conceal, &c. or ſhall be aiding to the concealing any ſuch arms or horſes, ſhall be committed to the common goal, by warrant under the hands and ſeals of any two juſtices of peace, and alſo forfeit treble the value; and that thoſe who diſcover any ſuch arms or ammunition, ſo as the ſame may be ſeized, ſhall have the full value thereof, to be awarded to them by the ſeſſions, &c. and that ſuch refuſers of the ſaid declaration, &c. ſhall be diſcharged whenever they ſhall make the ſame." See ch. 12. ſ. 17.

Sect. 5. As to the above mentioned diſability of preſenting to a church, it is enacted by 1 Will. and Mar. c. 26. That whoever ſhall refuſe to make the ſaid declaration upon ſuch a tender thereof as is preſcribed by the ſaid act, ſhall be diſabled to preſent to any benefice, &c. but it ſeems needleſs to ſet forth the clauſe of the ſaid ſtatute relating to this matter at large in this

this place, inaſmuch, as by 12 Annæ, c. 14. All perſons wh
ſoever making profeſſion of the Popiſh religion are under
like diſability, as will appear from ch. 15. ſect. 6, 7, &c.

By 4 Geo. 3. c. 2. ſ. 57. Papiſts are made liable to pay double land tax, if they do not conform in the manner directed by the act.

CHAPTER THE FIFTEENTH.

OF OFFENCES IN PROMOTING OR ENCOURAG THE POPISH RELIGION.

1 Comm. 451. 4 Comm. 55. 115.

OFFENCES in promoting or encouraging the Popiſh reli
ſeem to be reducible to the following heads: 1. Gi
or receiving Popiſh education. 2. Profeſſing the Popiſh relig
3. Buying or ſelling Popiſh books.

For the effect and conſequence of a foreign education in a popiſh ſeminary. Vide Str. 318. Comyns 207.

Sect. 1. The firſt offence of this kind, *viz.* That of givi
receiving Popiſh education depends upon ſeveral ſtatutes;
firſt it is enacted by 1 Jac. 1. c. 4. ſ. 6, 7. "That if any
"ſon or perſons under the king's obedience ſhall go or ſend
"cauſe to be ſent, any child or any other perſon under
"or any of their government, beyond the ſeas, out of the k
"obedience, to the intent to enter into, or reſide in, or r
"to any college, &c. of any Popiſh order, profeſſion or ca
"to be inſtructed, perſuaded or ſtrengthened in the P
"religion, or in any ſort to profeſs the ſame, every
"perſon ſo ſending ſuch child, &c. ſhall forfeit 100l.
"every ſuch perſon ſo paſſing or being ſent, &c. ſhall in re
"of him or herſelf only, and not in reſpect of any of his
"or poſterity, be diſabled to inherit, purchaſe, take, ha
"enjoy, any profits, hereditaments, chattels, debts, legaci
"ſums of money, &c. whatſoever: and that all eſtates, t
"and other intereſts whatſoever to be made, ſuffered or
"to the uſe or behoof of any ſuch perſon, or upon any tr
"confidence, mediately or immediately to or for the bene
"relief of any ſuch perſon, ſhall be utterly void."

Andr. 104. Lucas 113. 356. 406. 10 Mod. 113.

Keb 263. Vide 3 Bac. Abr. 789. and the caſes, &c. there cited.

Sect. 2. And it is farther enacted by 3 Jac. 1. c. 5.
"That if the children of any ſubject within the realm (th
"children not being ſoldiers, mariners, merchants, or
"apprentices or factors) ſhall be ſent or go beyond ſe
"prevent their good education in England, or for any
"cauſe, without the licence of the king or ſix of his
"council (whereof the principal ſecretary to be one) under
"hands and ſeals, that then every ſuch child ſhall ta

benefit by any gift, conveyance, deſcent, deviſe or otherwiſe
of or to any hereditament or chattel, till ſuch child being of
the age of eighteen years or above, take the oath of obedience
before ſome juſtice of peace of the county, liberty, or limit,
where the parent of ſuch child did and ſhall inhabit: and
that in the mean time the next of kin to ſuch child, who
ſhall be no Popiſh recuſant, ſhall have the ſaid heredita-
ments, &c. ſo given, &c. until ſuch child ſhall conform, &c.
and take the ſaid oath and receive the ſacrament; and that after ſuch conformity, &c. he who hath received the profits of the ſaid hereditaments, &c. ſhall account for the ſame, and in reaſonable time make payment thereof, and before the value of the ſaid goods, &c. And that whoever ſhall ſend ſuch child over ſeas, ſhall forfeit one hundred pounds."

Vide 11 & 12 Will. 3. c. 4. 18 Geo. 3, ch. 60.

Sect. 3. Alſo it is enacted by 3 Car. 1. c. 2. "That if any perſon under the obedience of the king ſhall go, or ſhall convey or ſend, or cauſe to be ſent or conveyed, any perſon out of the king's dominions, into any parts beyond the ſeas, out of the king's obedience, to the intent to enter into, or be reſident or trained up in, any priory, abbey, nunnery, Popiſh univerſity, college or ſchool, or houſe of Jeſuits, prieſts, or in a private Popiſh family, and ſhall be there by any Popiſh perſon inſtructed, perſuaded or ſtrengthened in the Popiſh religion in any ſort to profeſs the ſame, or ſhall convey or ſend, or cauſe to be conveyed or ſent, any thing towards the maintenance of any perſon ſo going or ſent, and trained and inſtructed, as is aforeſaid, or under the colour of any charity towards the relief of any priory, &c. or religious houſe whatſoever; every perſon ſo ſending, &c. any ſuch perſon or thing, and every perſon paſſing or ſent, being thereof convicted, &c. ſhall be diſabled to proſecute any ſuit in law or equity, or to be executor or adminiſtrator to any perſon, be capable of any legacy or deed of gift, or to bear any office within the realm. And ſhall forfeit all his goods and chattels, and ſhall forfeit all his hereditaments, offices and eſtates of freehold, during life."

The ſecond offence of this kind, *viz.* that of profeſſing the Popiſh religion, is puniſhed with the following diſabilities: 1. Of taking an eſtate in lands. *Secondly*, Of preſenting to a benefice.—Alſo it is puniſhed with the following reſtraints: 1. From keeping ſchool. 2. From with-holding a competent maintenance from a Proteſtant child.

1 Atk. 526. 537. 2 Atk. 65. 155. 210. 3 Atk. 155. 457.

Sect. 4. As to the firſt of the abovementioned diſabilities, viz. That of taking an eſtate in lands. It is enacted by 11 & 12 W. 3. c. 4. "That every perſon educated in or profeſſing the Popiſh religion, who ſhall not, within ſix months after

"the

8 Mod. 167. 2 P. Will. 5. 155. 364. 10 Mod. 89. 230. Strange 1096. 1 P. Will. 353. Cowp. 468. 1 Wilf. 176.

" the age of eighteen years, take the oaths of allegiance
" ſupremacy, and ſubſcribe the declaration againſt P
" mentioned in 30 Car. 2. ſtat. 2. chap. 1. in the Cha
" or King's Bench, or Quarter Seſſions of the county
" ſuch perſon ſhall reſide, ſhall in reſpect of himſelf or h
" only, and not in reſpect of any of his or her heirs or poſt
" be diſabled to inherit or take by deſcent, deviſe or limit
" in poſſeſſion, reverſion or remainder, any lands, teneme
" hereditaments, in England or Wales, &c. And durin
" life of ſuch perſon, and until he take the ſaid oaths, &
" next of kin being a Proteſtant, ſhall enjoy the ſame, w
" being accountable for the profits, but ſhall not do wilful
" under pain of forfeiting treble damages to the party fo
" bled: and all Papiſts, or perſons making profeſſion
" Popiſh religion, are diſabled to purchaſe in their own
" or the names of others, to their uſe or in truſt for them
" all eſtates, terms and other intereſt and profits whatſ
" out of lands made to their uſe, or on any truſt, mediat
" immediately, for their benefit, are void."

9 Mod. 172. 181.—But a Papiſt tenant in tail who ſuffers a recovery to himſelf in fee in order to make a marriage ſettlement; is not a purchaſer within the act. Str. 264

Sect. 5. In the conſtruction hereof it was reſolved b
Houſe of Lords, in Roper's caſe, That the deviſe of the r
of money ariſing from the ſale of an eſtate appointed to b
for payment of debts, &c. is within the ſtatute.

† But by 18 Geo. 3. c. 60. the above clauſe in the
of William the Third is repealed, and all perſons havi
claiming any lands, tenements or hereditaments, under tit
hitherto litigated ſhall enjoy the ſame as if the ſaid act
and 12 Will. 3. c. 4. had not been made, provided al
" that all ſuch perſons, within the ſpace of ſix calendar m
" after the paſſing of this act, or of the accruing of his
" or their title, being of the age of twenty-one years; or
" ſix months after he, or ſhe ſhall attain the age of twen
" years, or being of unſound mind, or in priſon, or beyo
4 Burn. 23. " ſeas, then within ſix months after ſuch diſability rem
" ſhall take and ſubſcribe the oath in the words as reci
" the ſtatute."—Which oath the courts of Record and Ch
at Weſtminſter, in Wales, Cheſter, Lancaſter, Durham,
General or Quarter Seſſions of the Peace, of any county or
in England are required to adminiſter and to regiſter.

Precedent of a title made under theſe ſtatutes. Lut. 1101. 1117. Comyns 182. Gibſon 771. 3 Lev. 332.

Sect. 6. As to the ſecond of the above mentioned diſab
viz. That of preſenting to a church, which by 3 Jac. 1.
18, 19, 20, 21. and 1 Will. & Mar. c. 26. did exten
to Popiſh recuſants convict, and perſons refuſing to ma
declaration againſt Popery, mentioned in 30 Car. 2. ſt
is enacted by 12 Ann. ſt. 2. c. 14. " That every Pap
" perſon making profeſſion of the Popiſh religion, &c

ry mortgagee, truſtee, or perſon any ways intruſted by or ſuch Papiſt, &c. with or without writing, ſhall be diſa- to preſent to any benefice, ſchool, or hoſpital, &c. or to nt any avoidance of any benefice, prebend or eccleſiaſtical ing; and that in all caſes the Univerſities ſhall preſent."

ct. 7. Alſo by force of the ſaid ſtatute, " The ordinary y tender the declaration againſt tranſubſtantiation to any re- ed Papiſt making a preſentation, and upon a refuſal to take ſame, the preſentation ſhall be void: alſo the ordinary y examine every preſentee upon oath, whether the perſon o preſented him be the true patron, or only a truſtee? d the court wherein a *quare impedit* ſhall be brought, may like manner examine the parties, and a bill may be brought any court of equity to diſcover ſuch ſecret truſts, &c. and anſwer of ſuch perſons upon any ſuch examination or bill ll be good evidence againſt ſuch patron, in reſpect of ſuch reſentation, but not as to any other purpoſe.'

And it is alſo enacted by 11 Geo. 2. c. 17. ſ. 5. " That ery grant of any advowſon, or right of preſentation, colla- n, nomination, or donation of and to any benefice, prebend, eccleſiaſtical living, ſchool, hoſpital or donative, and every nt or any avoidance thereof by any Papiſt, or perſon mak- profeſſion of the Popiſh religion, or any mortgagee, truſ- or perſon any ways intruſted directly or indirectly, me- ately or immediately, by or for any ſuch Papiſt, whether clared by writing or not, ſhall be null and void, unleſs ch grant ſhall be made *bona fide*, and for a full and valuable ſideration to and for, and merely and only for the benefit a Proteſtant purchaſer, and every ſuch grantee ſhall be emed a truſtee, &c. and compelled to diſcover, and accord- g to 12 Anne.—And that every deviſe thereof, with intent ſecure the benefit to the heirs or family of ſuch Papiſt ſhall null and void, and the deviſee bound to diſcover as aforeſaid." Vide 24 Geo. 3 ſeſſ. 1 ch. 1. 1 Geo. 1. ſt. 2. ch. 55. 3 Geo. 1 ch. 18.

ct. 8. I do not know that any reſolution hath been given on r of the above mentioned ſtatutes of 1 Will. & Mar. or 12 . However, the expoſitions which were made on 3 Jac. 1. ing to be for the moſt part applicable to theſe latter ſtatutes I ſhall take notice of the principal of them; as,

ct. 9. *Firſt*, That where a preſentment is *pro hac vice* veſted e univerſity by reaſon of the patron's being a Popiſh recuſant e time when the church became void, it ſhall not be diveſted by his conforming himſelf to the church, or by his death. 11 Co. 57, 58. Comyns 182. 10 Co. 57.

ct. 10. *Secondly*, That ſuch a patron is only diſabled to pre- and that he continues patron as to all other purpoſes, and fore that he ſhall confirm the leaſes of the incumbent, *&c.* Cawley 230.

Sect.

1 Jon. 19, 20.

Sect. 11. *Thirdly*, That ſuch a perſon by being diſable grant an avoidance, is no way hindered from granting the vowſon itſelf in fee, or for life or years, *bona fide*, and for conſideration.

1 Jon. 20, 21, &c.
Hob. 126, 127.
Moor 872.

Sect. 12. *Fourthly*, That if an advowſon or avoidance be ing to ſuch a perſon come into the king's hands, by reaſon outlawry, or conviction of recuſancy, &c. the king, and no univerſity, ſhall preſent.

Sect. 13. As to the firſt of the above mentioned reſtraints, that which relates to the keeping ſchool, it is enacted b ſaid ſtatute of 11 & 12 Will. 3. c. 4. ſ. 3. "That if an "piſt, or perſon making profeſſion of the Popiſh religion, "be convict of keeping ſchool, or taking upon themſelve "education or government, or boarding of youth in any "within this realm, or the dominions thereunto belonging, "ſhall be adjudged to perpetual impriſonment."

Vide ch. 13. ſ. 2.

† But this clauſe is repealed by 18 Geo. 3. c. 60. pro the party ſhall take and ſubſcribe the oath therein recited fore he ſhall have been apprehended or any proſecution menced againſt him.

Sect. 14. As to the ſecond of the above mentioned reſtr *viz.* that which relates to the power of a Popiſh parent ov Proteſtant child, it is enacted by the ſaid ſtatute of 11 & 12 3. c. 4. "That if any Popiſh parent, in order to com "Proteſtant child to a change of religion, ſhall refuſe to "ſuch child a ſufficient maintenance, ſuitable to the degre "ability of ſuch parent, and to the age and education of "child, the Lord Chancellor upon complaint may make "order therein, as ſhall be agreeable to the intent of the "act."

4 Comm. 115.
See 3 & 4 Ed. 6. c. 10.
13 Eliz. c. 2.

Sect. 15. The third offence of this kind, *viz.* that of or buying Popiſh books, depends upon 3 Jac. 1. c. 5. ſ. which it is enacted, "That no perſon ſhall bring from "the ſeas, nor ſhall print, buy, or ſell any Popiſh pri "ladies pſalters, manuals, roſaries, Popiſh catechiſms, "breviaries, portals, legends and lives of ſaints, cont "ſuperſtitious matter, printed or written in any language "ſoever, nor any other ſuperſtitious books printed or writ "the Engliſh tongue; on pain of forfeiting forty ſhilling "every book, &c. and the books to be burnt."

CH

CHAPTER THE SIXTEENTH.

OFFENCES AGAINST THE ESTABLISHED CHURCH BY PROTESTANT DISSENTERS.

OBSTINATE nonconformists were compellable by 31 Eliz. c. 1. to abjure the realm, and were also subject to the penalties mentioned in the tenth and eleventh chapters of this book; and dissenters were farther restrained by 17 Charles the Second, chapter 2. and 22 Charles 2. ch. 1.—But at this day by 1 Will. & Mar. c. 18. s. 2. "All persons dissenting from the church," except Papists, and those who shall in preaching or writing deny the doctrine of the Trinity, "are exempted from all penal laws relating to religion," except the twenty-fifth of Charles the Second, chap. 2. by which all officers in trust are bound to receive the sacrament according to the usage of the church of England, and also to take the oaths of allegiance and supremacy, and the test; and also except 30 Charles 2. st. 2. c. 1. by which the members of both houses of parliament, and all the king's sworn servants (a) are bound to make a declaration against transubstantiation and the invocation of saints, and the sacrifice of the mass, "provided such dissenters take the oath of allegiance and supremacy, and make the said declaration against transubstantiation, &c. and come to some congregation for religious worship, in some place registered (1) either in the Bishop's Court or at Sessions, the doors whereof shall be neither locked, barred, nor bolted."

2 Burn. E. L. 143. 4 Comm. 53. 2 Jones 225. 233, 234.

Vide sup. ch. 8.

(a) This clause relating to the king's sworn servants is repealed by 2 Geo. 2. c. 31. Salk. 527.

(1) In registering the certificate, the justices are merely ministerial. and if persons resorting to any such metting house, do not bring themselves within this act, such registering will not protect them from the penalties of the law. 1 Black. 606.—Nor doth this extend to all persons who shall think fit to style themselves protestant dissenters. 3 Burn. E. L. 179. therefore if a man be a professed churchman, and only sometimes go to meetings, the toleration act will not excuse him. 6 Mod. 190. A minister also, exercising his functions, without being licenced by the bishop, Lindwood 288. in a chapel of ease, according to the rites of the church of England, is not within the act, for by Lord Hardwicke, it was made to protect tender consciences from penalties, and to extend it to those of the church who act contrary to its rules and discipline, would introduce an endless confusion. 2 Atk. 498.

Sect. 2. Also by section 8, 9, 10, 11, 12. "Dissenting teachers are tolerated, if they take the said oaths, &c. at the General or Quarter Sessions to be held for the place where such persons live, and subscribe the thirty-nine articles of the church of England, except those few scrupled ones concerning church-government and infant-baptism." And by 10 Anne

Salk. 572. Burr. 1043.

Anne c. 2. ſ. 7, 8, 9. "They may qualify themſelves, as w
"during a proſecution upon any penal ſtatute, as before, a
"being qualified in one county may officiate in another, up
"producing a certificate, and taking the ſaid oaths, &c. if r
"quired."

As to Quakers Vide 8 Geo. 1. c. 6. and 22. Geo. 2. c. 46. ſ. 36.

Sect. 3. Alſo by the ſaid ſtatute of 1 William and Mary
13, 14, 15. Thoſe who ſcruple the taking of any oath, a
within the like indulgence, provided they ſubſcribe the aforeſa
declaration, and alſo a declaration of fidelity to the king, a
againſt the depoſing doctrine and papal ſupremacy; and alſo pr
feſs their faith in God the Father, and Jeſus Chriſt his eter
Son, the true God, and the Holy Spirit, one God for evermor
and acknowledge the holy ſcriptures of the Old and New Tes
ment to be given by divine inſpiration.

3 Lev. 376. Gibſ. 519. *Sed vide* the marriage act, 26 Geo. 2. c. 33. *Infra*.

Sect. 4. Since this ſtatute a prohibition lies to the ſpiritu
court proceeding againſt perſons for incontinency, who hav
been married in a licenſed conventicle.

† *Sect.* 5. And by 19 Geo. 3. c. 44. which declares th
1 Will. and Mar. c. 18. to be a public act, "every perſo
"diſſenting from the church of England, in holy orders,
"pretended holy orders, or pretending to holy orders, being
"preacher or teacher of any congregation of diſſenting pr
"teſtants, who, if he ſcruple to declare and ſubſcribe as afor
"ſaid, ſhall take the oaths, and make and ſubſcribe the decla
"ration againſt popery required by the ſaid act of 1 Will.
"Mary, to be taken, made and ſubſcribed by proteſtant diſſen
"ing miniſters, and ſhall alſo make and ſubſcribe a declarati
"in the words following, '*I, A. B. do ſolemnly declare, in t*
'*preſence of Almighty God, that I am a chriſtian, and a proteſta*
'*and as ſuch that I believe that the ſcriptures of the Old and Ne*
'*Teſtament, as commonly received among proteſtant churches,*
'*contain the revealed will of God; and that I do receive the ſa*
'*as the rule of my doctrine and practice*' ſhall be, and every ſu
"perſon is hereby declared to be, intitled to all the exemption
"benefits, privileges and advantages of 1 Will. & Mary c. 1
"and 10 Anne c. 2. and the juſtices of the peace at the Gener
"Seſſions of the peace, where any proteſtant diſſenting miniſt
"ſhall live, are required to adminiſter the laſt mentione
"declaration to ſuch miniſter, upon his offering himſe
"to make and ſubſcribe the ſame."—And it is furth
enacted, "that no proteſtant diſſenter ſo qualified as aforeſai
"ſhall be proſecuted for teaching and inſtructing youth, as
"tutor or ſchoolmaſter, in any caſe whatſoever,"—provided a
ways, "that this qualification ſhall not intitle ſuch diſſenters
"obtain or hold, the maſterſhip of any college or ſchool of roy
"foundation, or of any other endowed college or ſchool for t
"education of youth, unleſs founded ſince 1 Will. & Mar

for the immediate uſe and benefit of proteſtant diſſent-ers" (2).

(2) The law ſo far favours diſſenters, as to permit the eſtabliſhment of charities for the pport of their miniſters 2 Veſey 273. Burr. 1267. and *they* are exempted by this act ſ. from ſerving upon juries, and upon county, ward, or pariſh offices. And by 19 eo. 3. c. 44. from ſerving in the militia under 2 Geo. 3. c. 20. The King's bench o will grant protection to a proteſtant diſſenting miniſter by mandamus. Burr. 65. By information alſo for the diſturbance of his congregation. Gib. 304. 1 od. 168—And to deſtroy any religious meeting-houſe regiſtered according to the eration act is felony without clergy. And the hundred made liable to the damages. Geo. 1. ſt. 2. c. 5. L. Ray. 125.—But no marriage can be celebrated, but ſome church or chapel where banns have uſually been publiſhed; unleſs the rties are Jews or Quakers. 26 Geo. 2. c. 33.—And by Lord Mansfield all the con-ſequences of the act of toleration ought to be purſued with the greateſt liberality in caſe the ſcrupulous conſciences of diſſenters; guarding at the ſame time againſt any prejudice t may ariſe to the reſt of the king's ſubjects from this indulgence and protection. wp. 388. 393. 4 Comm. 52.—Reſpecting meeting-houſes in Scotland. *Vide* 10 ne c. 7. 19. Geo. 2. c. 38. 21 Geo. 2. c. 34.

CHAPTER THE SEVENTEENTH.

OF HIGH TREASON.

OF Offences more immediately againſt man, ſome are more immediately againſt the king, others more immediately againſt the ſubject—Offences more immediately againſt e king are either capital or not capital. The capital offences this nature are either high treaſon or felonies. Prin. P.L. 116.

Sect. 1. And firſt, Of high treaſon; concerning which, be-re 25 Edw. 3. c. 2. there was great diverſity of opinions, and any offences were taken to be included in it, beſides thoſe preſſed in the ſaid ſtatute; as the killing of the king's father, other, or even of his meſſenger; producing the pope's bull of communication, and pleading it in diſability; refuſing to ac-ſe a man in the king's courts, and ſummoning him to appear, d defend himſelf before a foreign prince; and other ſuch e acts tending to diminiſh the royal dignity of the crown. 3 Inſt. 7. B. Trea. 14. 22 Aſſ. 49. 30 Aſſ. 19. Staunf. 2. Prin. P. L. 126. to 130. 1 Hale 76, to 87.

Sect. 2. But all treaſons were ſettled by the ſaid ſtatute of Edw. 3. c. 2. which, by 1 Mary, ſeſſ. 1. c. 1. was rein-ced, and again made the only ſtandard of treaſon; and all tutes between the ſaid ſtatutes of 25 Edw. 3. and 1 Mary, hich made any offences high or petit treaſon, or miſpriſion of treaſon, are abrogated. So that no offence is, at this day, to eſteemed high treaſon, unleſs it be either declared to be ſuch the ſaid ſtatute of 25 Edw. 3. or made ſuch by ſome ſtatute ce the firſt of Mary. Plow. 86. 3 Inſt. 12 21. 18 Eliz. c. 1.

And therefore I ſhall conſider, Firſt, Such offences as are h treaſon within the ſaid ſtatute of 25 Edw. 3. or other

ſtatutes grounded thereon, and explaining the ſame.—Secondly, Such as are made high treaſon by ſubſequent ſtatutes.

1 Hale 87. Sum. 17.

And firſt, By the ſaid ſtatute of 25 Edw. 3. there are four kinds of high treaſon. *Firſt*, That which immediately concerns the king, his wife, or children. *Secondly*, That which concerns his office in the adminiſtration of juſtice. *Thirdly*, That which concerns his ſeal. *Fourthly*, That which concerns his coin. And theſe three laſt are called interpretative treaſons.

1 H. 4. c. 10. Kely 20. 3 Inſt. 1. 6, 116. 8 Co. 38. Dyer 98. 298. 128. 332. B. Trea. 1, 2, 3. 7. 9. 11. 13. 16. 19. 24. 27. 32. Co. Pla. 360. 3 Co. 2. 10. 4 Co. 57. 7 Co. 33. 13 Co. 54. Sav. 4.

Sect. 3. That of the firſt kind is thus declared by the following words of the ſaid ſtatute of 25 Edw. 3. "Whereas divers "opinions have been before this time, in what caſe treaſon ſhall "be ſaid, and in what not, the king, at the requeſt of the lords "and of the commons, hath made a declaration in the manner "as hereafter followeth; that is to ſay,—When a man doth "compaſs or imagine the death of our lord the king.—Or "my lady his queen,—Or of their eldeſt ſon and heir;—Or if "man do violate the king's companion,—Or the king's eldeſt "daughter unmarried;—Or the wife of the king's eldeſt ſon and "heir;—Or if a man do levy war againſt our lord the king in "his realm,—Or be adherent to the king's enemies in his "realm, giving them aid and comfort in the realm or elſe"where,—and thereof be provably attainted of open deed by "the people of their condition."

For the explication of which I ſhall conſider, Firſt, The branch relating to the king and his relations. Secondly, That concerning the levying of war, and adhering to the king's enemies, &c. Thirdly, That concerning an overt act.

As to the branch relating to the king and his relations, I ſhall conſider the following particulars: 1. Who may be guilty? What is the import of the words, "*Compaſs or imagine the king's* "*death?*" 3. Who is a king within the act? 4. What is the extent of the clauſe concerning the king's relations?

Keilw. 181. &c. 3 Init. 4. 8. Calvin's caſe 6. 4 Comm. 29. Sum. 47. Bac. Max. 56. 5 Bac. Ab. 112.

Sect. 4. As to the firſt point, *viz.* Who may be guilty? I ſhall take it for granted at this day, That all ſubjects of the realm of diſcretion, and of ſane memory, whether they be eccleſiaſtical or temporal, men or women, are included within thoſe general words, "When a man doth compaſs, &c."

(a) B. Trea. 32. 3 Inſt. 5. 11. Co. Lit. 129. Sum. 10. 15. 1 Hale 96.—100. 5 St. Tr. 23. 6 St. Tr. 87.

Sect. 5. Alſo it ſeems clear, that the ſubjects of a foreign prince coming into England, and living under the protection of our king, may, in reſpect of that local ligeance which they owe to him, be guilty of high treaſon (a), and indicted that they, *contra dominum regem*, (the words *naturalem dominum ſuum* being omitted) did compaſs, &c. *contra ligeantiæ ſuæ*

(b). And it is ſaid, that even an ambaſſador committing treaſon *againſt the king's life*, may be condemned and executed here, and that for other treaſons he ſhall be ſent home. And it hath been holden, that there is no need of the words *contra ligeantiæ ſuæ debitum* in an indictment for a treaſon, which is made ſuch by ſtatute, and is not a treaſon in its own nature. And that there is no neceſſity for the words *contra regium ſupremum dominum ſuum* in any indictment of treaſon.

(b) Dyer 145. Hob. 271. Salk. 631. 633. Carth. 319. Skin. 360. 425. Foſ. 186. 187. L. Ray, 1. 3 Lev. 396. 4 Mod. 162. 395. 7 Co 6. 12 Mod. 51.

Sect. 6. But it ſeemeth that aliens, who in an hoſtile manner invade the kingdom, whether their king were at war or peace with ours, and whether they come by themſelves or in company with Engliſh traitors, cannot be puniſhed as traitors, but ſhall be dealt with by martial law.

95. 1 Hale. 59. B. Trea. 1, 32. 3 Inſt. 11. Con. Dalif 32. 7 Co. Rep. 6. 5 Bac. Ab. 112.

Sect. 7. It hath been reſolved, That one born a natural ſubject is bound to ſuch an inſeparable allegiance to our king, that whſoever he may endeavour to renounce it, and transfer his ſubjection from his natural to a foreign prince, yet if he practiſe that in any other ſubject would amount to high treaſon, he ſhall ſuffer as a traitor.

5 St. Tr. 23. Dy. 300. 298. Co. Lit 129. Foſ. 70 184. 1 Hale 68. 96.

Sect. 8. As to the ſecond point, *viz.* the import of the words, "Compaſs or imagine the king's death." Since the ſaid ſtatute theſe words have been ſo ſtrictly followed, that where a king hath been actually murdered, yet not the killing him, but the compaſſing his death has in the indictment been laid as the treaſon, and the killing as an overt act thereof.

Kely. 8. 1 Hale. 107. 119—167. Prin. P. L. 123. Foſ. 193. 196. 3 Inſt. 12.

Sect. 9. And ſuch compaſſing the king's death may be manifeſted not only by overt acts of a direct conſpiracy to take away the life, but alſo by ſuch as ſhew ſuch a deſign, as cannot be executed without the apparent peril thereof; as by (c) writing letters to a foreign prince, inciting him to invade the realm; or aſſembling men together in order to (d) impriſon or (e) depoſe the king, or to (f) compel him by force to yield to certain demands, or to levy war againſt his (g) perſon.

(c) Dyer 298. Burr. 646. Sum. 11. 1. St. Tr. 199. 206. 2 Vern. 315. 3 Inſt. 14. 4 St. Tr. 406. 1 Hale 120. (d) 3 Inſ. 6. 12 38. (e) Kely 20, 22. Qu. B. Trea. 24. (f) 11 Mod. 322. Moor. 621. (g) Kely 14, 15. 17. 20. 21. Inſt. 6. 12. 38 Kely 20, 21, 22. Yet this was made a query in B. Trea. 24. 11 Mod. 322. Moor 621. Kely 14. 15. 20, 21.

(1) Every thing wilfully and deliberately deſigned, or attempted to be done, whereby the life of majeſty may be endangered, is an act of compaſſing his death. Foſ. 195. The guilt commences only when *ſome meaſure* ſhall appear to have been *taken*, to effectuate the guilty purpoſe. Prin. P. L. 121. 1 Hale 119. Kely, 17.

Sect. 10. But it is poſſible that it may not be proved by an act which directly cauſes the king's death; as the glancing of an arrow did that of William Rufus, proving fatal merely through an unfortunate accident, and being accompanied with no unlawful circumſtance.

3 Inſt. 6. 1 Hale 107.

Sum. 12.
3 Inſt. 7.
9 Ed. 4. 1.
1 Hale 101. &c.
Foſt. 188. 400.
4 Comm. 77.

Sect. 11. As to the third point, *viz.* Who is a king within this act? It ſeems agreed, that every king for the time being in actual poſſeſſion of the crown is a king, within the meaning of this ſtatute. For there is a neceſſity that the realm ſhould have a king, by whom and in whoſe name the laws ſhall be adminiſtered; and the king in poſſeſſion being the only perſon who either doth or can adminiſter thoſe laws, muſt be the only perſon who has a right to that obedience, which is due to him who adminiſters thoſe laws; and ſince by virtue thereof he ſecures to us the ſafety of our lives, liberties, and properties, and all other advantages of government, he may juſtly claim returns of duty, allegiance, and ſubjection.

1 Hale 61, 102, 103.
Sum. 12.
Stow, Ann. 418.
Foſ. 398. 186.
9 Ed. 4. 1.
B. Treaſ. 10, 32.
3 Inſt. 7.
Dalt. 223.

Sect. 12. And this plainly appears even by the prevailing opinions in the time of king Edward the Fourth, in whoſe reign the diſtinction between a king *de jure* and *de facto* ſeems firſt to have begun; and yet it was then laid down as a principle, and taken for granted in the arguments of Bagot's caſe, that a treaſon againſt Henry the Sixth, while he was king in compaſſing his death, was puniſhable afterward Edward the Fourth came to the crown, from which it follows that allegiance was allowed to have been due to Henry the Sixth while he was king, becauſe every indictment of treaſon muſt lay the offence, *contra ligeantiæ debitum.*

9 Ed. 4. 1. 2.
B. Judg. 42.
C. of Par. 22.
Patents 21.
Denizen 3.
Exempt 4.
Judg. 42. F.
Aſſ. 29. Deniz. 1. 9 Ed. 4. 1, 2. 11. 9 Ed. 4. 2.

Sect. 13. It was alſo ſettled, That all judicial acts, done by Henry the Sixth while he was king, and alſo all pardons of felony and charters of denization granted by him, were valid; but that a pardon made by Edward the Fourth, before he was actually king, was void, even after he came to the crown.

Sect. 14. And by the 11 Hen. 7. c. 1. it is declared, "That "all ſubjects are bound by their allegiance to ſerve their prince "and ſovereign lord for the time being in his wars, for the "defence of him and his land againſt every rebellion, power "and might reared againſt him, &c. and that it is againſt "laws, reaſon, and good conſcience, that they ſhould loſe or "forfeit any thing for ſo doing;" and it is enacted, "That "from thenceforth no perſon that attend on the king for the "time being, and do him true and faithful allegiance in his "wars, within the realm or without, ſhall for the ſaid deed "and true duty of allegiance be convict of any offence."

Foſter 399.
Cuſ. de Normand. 13.
Fleta. b. 3. c. 16. ſ. 22.

Sect. 15. From hence it clearly follows: Firſt, That every king for the time being has a right to the people's allegiance, becauſe they are bound thereby to defend him in his wars againſt every power whatſoever.

4 Comm. 77.
Foſter 188.

Sect. 16. Secondly, That one out of poſſeſſion is ſo far from having any right to our allegiance by virtue of any other title which he may ſet up againſt the king in being, that we are bound by the duty of our allegiance to reſiſt him.

Sect. 17. It is true, indeed, that after the reſtoration of king arles the Second, it was reſolved, that all thoſe who acted inſt, and kept him out of poſſeſſion, in obedience to the pow- then in being, were traitors. Foſter 402. Kely. 14.

Sect. 18. But it ought to be conſidered, that it was firſt re- ved by the ſame judges, that king Charles the Second was g *de facto* as well as *de jure*, from his father's death; and it pparent, that no other perſon was in poſſeſſion of any ſove- n power known to our laws. Kely 14, 15. 1 Keb. 315. Foſter 403. 1 Keb. 454. 4 Comm. 77.

Sect. 19. However, it is a general unconteſted rule, that upon death of a king in actual poſſeſſion of the crown, his heir is king within the act before his coronation. For without a g to execute the laws, juſtice muſt fail; and therefore it is a xim, that the king never dies. 3 Inſt. 7. Sum. 12. 1 Hale 61. 102, Foſ. 188. 189.

Sect. 20, A titular king, as the huſband of a queen regnant, ms to be within the words, yet it is clearly not within the ning of this law; and *é converſo*, a queen regnant is not hin the ſtrict words, and yet ſhe is undoubtedly within the ning; for by the words, "Our lord the king," is meant perſon inveſted with the regal power. 1 Hale 102. 106. 1 Mar. ſt. 3. c. 1. Sum. 12. 3 Inſt. 8. 4 Com. 76, 77

Sect. 21. By 1 Will. and Mar. ſeſſ. 2. ſ. 9. "Every perſon hat ſhall be reconciled to, or hold communion with, the hurch of Rome, or profeſs the Popiſh religion, or marry a apiſt, ſhall be excluded, and be for ever uncapable to inhe- it, poſſeſs, or enjoy the crown of this realm, &c. And in very ſuch caſe the people of this realm are abſolved from heir allegiance, &c."

Sect. 22. As to the fourth point, *viz.* The extent of the ſe concerning the king's relations. It is to be obſerved,— t, That no queen or princeſs dowager is any way within the view of it. Secondly, That if the companion (by which d is meant the wife) of the king or prince, conſent to an lterer, ſhe is no leſs guilty of high treaſon than he. Third- That under the words, "Their eldeſt ſon and heir," the of a queen regnant is included, and alſo the ſecond ſon after death of the firſt, and *perhaps* alſo a collateral heir apparent, cially if he be declared ſuch by parliament (2). Hale 124, &c. Britt. c. 22. 3 Inſt. 2. 8. Sum. 12. 4 Comm. 81.

) A queen, divorced a *vinculo matrimonii*, is not within this ſtatute. 1 Hale 124; nor e wife of a king's ſecond ſon, although her iſſue would ſucceed to the throne in pre- nce to the iſſue of the eldeſt daughter; neither doth it ſeem treaſon to violate the el- daughter, that hath been married, ſuch violation not being within the letter, though in the reaſon of the ſtatute Prin. P. L. 124, 125.—The king's eldeſt daughter, if he no ſon, is neither within the words nor the meaning of "the king's eldeſt " for a ſon may poſſibly be born. It is therefore uſual for the legiſlature provide for this caſe, 1 Hale 127. And both Coke and Hale are of opinion a collateral heir apparent is not within the ſtatute until he is ſo declared by parlia- t, 3 Inſt. 9. But a ſecond daughter, the eldeſt being dead, is within the words, "the ing's eldeſt daughter unmarried." 1 Hale 128, Foſter's firſt Diſcourſe.

And

1 Hale 131. 141. 150. 153. Foſter 208.

And now we are come to the Second general branch of t kind of high treaſon, *viz.* That concerning the levying of w &c. and adhering to the king's enemies, &c. In treati whereof I ſhall conſider, Firſt, What acts ſhall be ſaid amount to a levying of war againſt the king. Secondly, Wh ſhall be ſaid to be an adherence to the king's enemies.

Foſter 195.

Sect. 23. As to the firſt point, it is to be obſerved, that only thoſe who directly rebel againſt the king, and take up a in order to dethrone him, but alſo in many other caſes, th who in a violent and forcible manner withſtand his lawful a thority, or endeavour to reform his government, are ſaid levy war againſt him; and therefore,

Foſ. 13, 14. 216 217. 219. 3 Inſt. 16. B. Treaſ. 24. Dalt. c. 89. 1 Hale 49. 139. 146. 296. 168 169. Moor 621. Sum. 14. 2 And. 5. Kely. 75. 9 St. Tr. 57. 566. Salk. 635.

Sect. 24. Thoſe that hold a fort or caſtle againſt the kin forces, or keep together armed numbers of men againſt t king's expreſs command, have been adjudged to levy war agai him.—But thoſe who join themſelves to rebels, &c. for fear death, and retire as ſoon as they dare, ſeem to be no way gui of this offence (3).

(3) The apprehenſion of injury to property either real or perſonal, of whatever ext or however enormous or impending it may be, will not extenuate the guilt of this offen for every artful leader of a rebellion might eaſily contrive to furniſh his followers w this excuſe. 8 St. Tr. 56. 4. Comm. 30. 83. The juſt apprehenſion of immedi death, derived from a ſerious force upon the perſon of the offender, and continued in ſu a manner throughout the period of ſubjection, that the traitor could not attempt an cape with probability of ſucceſs, is the true and only circumſtance that will extingu the guilt, and avoid the puniſhment of *conſtrained* treaſon. 9 St. Tr. 566.—And this p has been very ſtrictly conſtrued, for the officer who commanded at the execution of Ch les the Firſt, alledged in vain upon his defence, that he acted by the command of ſupe ors whoſe power compelled him to obey. 1 Hale 50. Kely 13. And certainly it is t for private individuals, miſguided by ignorance or heated by faction, to determine t proper moment of reſiſtance, Prin. P. L. 131—But whether force or no force: how l that force continued, with every circumſtance tending to ſhew the practicability of an cape are facts for the conſideration of a jury. Foſ. 14. 216.

1 Hale 131. 135. 152, 153 Moor 621. C. Car. 583. 589. Pop. 122. 2 And. 4, 5. 3 Inſt. 9. 1 Ven. 250. Sum. 14. Kely. 76. 2 Wilſ. 365. 8 St. Tr. 289 Foſter 209, 210, 211. Dougl. 510.

Sect. 25. Thoſe alſo who make an inſurrection in order redreſs a publick grievance, whether it be a real or pretend one, and of their own authority attempt with force to redreſs are ſaid to levy war againſt the king, although they have no rect deſign againſt his perſon, inaſmuch as they inſolently inv his prerogative, by attempting to do that by private author which he by public juſtice ought to do, which manifeſtly te to a downright rebellion; as where great numbers by fo attempt to remove certain perſons from the king; or to violent hands on a privy counſellor; or to revenge themſel againſt a magiſtrate for executing his office; or to bring do the price of victuals; or to reform the law or religion; or pull down all bawdy-houſes; or to remove all incloſures general, &c. (4)—But where a number of men riſe to remo

(4) An attempt by intimidation and violence to force the repeal of a law, is a levy of war againſt the king and high treaſon. Lord Mansfield, 570.

a grievan

grievance to their private intereſt, as to pull down a particular incloſure intrenching upon their common, &c. they are only rioters.

Sect. 26. In a ſpecial verdict, not only thoſe who are expreſsly found to have been aiding and aſſiſting a rebellious inſurrection, but perhaps alſo thoſe who are only found to have acted in the execution of the intended violence, or to have attended the principal offender from the beginning, though they be not found to have known the deſign of the riſing, ſhall be adjudged guilty of high treaſon. But thoſe who are found only to have ſuddenly joined with them in the ſtreets, and to have flung up their hats and hallowed with them, are guilty of no greater offence than a riot at moſt.

1 Hale 136. 138. 1 Sid. 358. 3 And. 66. Pop. 121. 3 Inſt. 9. Sum. 14. Kely. 75. 79. Moor 621. Ld. Raym. 1585. 1 Black. 47.

Sect. 27. However it is certain, that a bare conſpiracy to levy ſuch a war cannot amount to treaſon, unleſs it be actually levied. Yet it hath been reſolved, that a conſpiracy (5) to levy war againſt the king's perſon may be alledged as an overt act of compaſſing his death, and that in all caſes, if the treaſon be actually completed, the conſpirators, &c. are traitors as much as the actors; and (a) that there may be a levying of war, where there is no actual fighting.

1 Hale 131. 151. Daliſ. 14, 15. 4 St. Tr. 63, 97. Sum. 13, 14. Dyer 98, Kely. 19, 20. Poſt. ſ. 31. Het. 65. 3 Inſt. 9. 14. (a) Salk. 635. 2 Ven. 31. 315.

Inſt. 11. 1 Hale 165. to 169. Sum. 14. 115. Daliſ. 89, 224. 6. 5 Bac. Ab. 117. Foſter 342. Prin. P. L. 122. 10 Mod. 322.

(5) By 13 Eliz. and 13 Car. 2. conſpiracies to levy war were declared high treaſon; and ſeveral judgments were given upon thoſe ſtatutes; but they both expired with the reigns they were deſigned to protect. Foſt. 213.

Sect. 28. As to the ſecond point, *viz.* what ſhall be ſaid to be an adherence to the king's enemies, &c. this is explained by the words ſubſequent, "Giving aid and comfort to them;" from which it appears, that any aſſiſtance given to aliens in open hoſtility againſt the king, as by ſurrendering a caſtle of the king's to them for reward, or ſelling them arms, &c. or aſſiſting (b) the king's enemies againſt his allies, or cruiſing in a ſhip with enemies to the intent to deſtroy the king's ſubjects is clearly within this branch. But there is no neceſſity, expreſsly to allledge, that ſuch adherence (c) was againſt the king, for it is apparent; (6) yet the ſpecial manner of adherence muſt be ſet forth. And it is ſaid, that the ſuccouring a rebel fled into another realm is not within the ſtatute, becauſe a "rebel is not properly an enemy," and the ſtatute is taken ſtrictly.

(b) Salk. 634. Moor 620. Vent. 315. 4 St. Tr. 347, &c. (c) 4 St. Tr. 347. 3 Inſt. 12, 13. Salk 635. 1 Hale 108. 159. Sum. 13. 3 Inſt. 13, 14 B. Treaſ. 24. Foſ. 197. 220. 4 Comm. 82.

Sect.

(6) Although the ſolemnity of a previous denunciation of war is not always neceſſary, or expedient. Bynkerſhoek, p. 1. Yet it is neceſſary to aver, in proceedings on this cauſe of the act, that the perſons adhered to, were the king's enemies, which fact may be evidenced by its public notoriety. Prin. P. L. 136.—Vide 2 & 3 Ann. 2. 20. ſ. 34. 2 Ventris 316.

Fol. 194. 20. 1 Hale 122. 4. 6. St. Tr. 5 St. Tr. 21. 22.

Sect. 29. As to the branch relating to an overt act, I shall take it for granted, that some overt act must be alledged in every indictment of high treason, in compassing the death of the king, &c. or levying war, or adhering to the king's enemies; but there hath been some question concerning what shall be said to be such an overt act, as to which I shall consider,—First, What facts amount to such an overt act.—Secondly, Whether any words be sufficient.

10 Mod. 322. 3 Inst. 14. Keyl. 20.

Sect. 30. As to the first point it seems clearly agreed by all that conspiring the king's death, and providing weapons to effect it, or sending letters to incite others to procure it, or actually assembling people in order to take the king into their power, and all other such like notorious facts, done in pursuance of a treasonable purpose against the king's person, may be alledged as overt acts to prove the compassing his death.

(a) Kely. 14. 17. (b) Kely. 20. 3 St. Tr. 149. 158. 178. 228. 4 St. Tr. 63. 79. 207. 277, 278, 282. Rushw. Strafford's Trial 684. (c) Kely. 15. 3 St. Tr. 126. (d) 1 And. 106. (e) 2 Ven. 316.

Sect. 31. It has also been adjudged, that the (a) levying war against the king's person; or the bare (b) consulting to levy such war; or meeting together and (c) consulting the means to destroy the king and his government; or (d) assembling with others and procuring them to attempt the king's death; or listing (e) men in order to depose the king; or (f) printing treasonable positions, as that the king is accountable to the people, and that they ought to take the government into their own hands, &c. or publishing a book to prove that (g) the king's government is antichristian and heretical, &c. may be alledged as overt acts to prove the compassing the king's death (7).

(f) 1 Kely 22. 1 St. Tr. 977. 3. St. Tr. 228. Sup. f. 24. (g) 2 Roll. 89, 90. Fol. 346. 11 Mod. 322. 5 Bac. Ab. 117. Prin. P. L. 123.

(7) Soliciting a prince, in amity with the crown, to invade the realm is an overt act of the *intention* to levy war and may be laid as an overt act of compassing the king's death. And a correspondence designed to enable the enemy to annoy us or to defend themselves although intercepted in its first progress, at the post office, is an overt act of both these species of treason. Burrow 646. 10 State Trials Appen. 77. for the treason was complete on the part of the agent though it had not the effect he intended. Fol. 217, 218. Prin. P. L. 137.

2 Roll. 89. C. Car. 125. See the reversal of the attainder of A. Sidney, 1 W. & M. St. c. 7. private acts. 1 Hale 118. 3 St. Tr. 733.

Sect. 32. As to the second point, *viz.* Whether any words are sufficient overt acts? It has been holden, That written words in a sermon or other writing may amount to overt acts of compassing the king's death, though the same neither actually were, nor ever were intended to be, preached or published. But this opinion seems to be over severe; for though it be true that *scribere est agere*, yet surely it cannot with any propriety be said, that to write in such a private manner *est aperte agere*, and it seems rigorous to make that amount to a malicious design against

ainſt the king, which perhaps was only done by way of uſement or diverſion (8).

(8) This is Peachum's caſe. The reporter ſays that "many of the judges were of opinion that it was not treaſon;" It therefore weigheth very little; and no great regard h been paid to it ever ſince, Foſ. 199. and, if the *dark manner* be conſidered, in which conviction of this innocent clergyman was procured, ſtill leſs regard will be paid to —Vide Bacon's Letters 111, 117, and Hume's Hiſt.

Sect. 33. But the great queſtion is, Whether words only oken can amount to an overt act of compaſſing the king's ath? Which having been queſtioned by ſome great men, d denied by others, I dare not be peremptory concerning (9). S. P. C. 2. Kely. 13. 3 Inſt. 5. 14. 140. Sum. 13.

(9) The intentions of the mind cannot be diſcovered but through the medium of ſome n and unequivocal act; Stamforde therefore inclines to think that a compaſſing "*uttere er parolx*," is not ſuch a ſufficient overt act, from which an inference of the guilty pur- ſhould be drawn. S. P. C. 2. Foſter 202. Lord Coke ſays, *that without an overt act* rds may make a man a heretic, but cannot make him a traitor, becauſe they are capa- of ſuch an endleſs variety of conſtruction, that few agree in the ſame opinion concern- them. 3 Inſt. 14. 140. Foſter 200. And Lord Hale expreſsly ſays, that bare words not an overt act of treaſon. 1 Hale 111. 323.

Sect. 34. However it ſeems agreed, that words ſpoken only contempt and diſgrace of the king, and not directly ſhewing purpoſe to rebel, or any way to hurt his perſon, or diſturb government, as thoſe which charge him with a perſonal vice, drunkenneſs, &c. or a perſonal defect, as want of wiſdom or dineſs, &c. ſhall not be ſo far ſtrained as to be made overt of compaſſing his death, &c. C. Car. 117. 125. Foſter 200.

Sect. 35. Indeed it has been holden, that to affirm that another a better title than the king is high treaſon, becauſe it tends draw people from their allegiance, and to create a mutiny, but perhaps this may be queſtioned, becauſe it cannot tainly appear from ſuch words, whether the ſpeaker had a gn againſt the king's perſon or no? However there can be doubt, but that ſuch diſcourſes are highly puniſhable, as at miſdemeanors, and tending to raiſe doubts, and diſturb government. Yelv. 107. 2 Roll. 90. Palm. 426. 1 Black 37.

Sect. 36. All the following words have been adjudged high ſon, "If king Henry the Eighth will not take back his , he ſhall not be king, but ſhall die."—"If the king will eſt me for high treaſon, I will ſtab him."—"If I knew that kin Warbeck was the ſon of Edward the Fourth, I would e his part againſt Henry the Seventh." 1 Roll. 185. 14 H. S. 12. Prin. P. L. 125, 126.

Sect. 37. But however the laws may ſtand in relation to ſuch ditional words, or to looſe words ſpoken without relation to act, yet it ſeems clear that *words joined to an act may explain* and that words of perſuaſion to kill the king, or manifeſting agreement, or conſultation, or directions to that purpoſe, are Salk. 631. 2 Ven. 315. 4 St. Tr. 30, 31. 95, 172. 1 Hale 115, 116.

oll. 185. 12 Mod. 72. C. Car. 117. 118. 125. 332, 333. 1 Lev. 57. 2 St. Tr. 135. 3 St. Tr. 295. 1001. 1 Keb. 14, 34. 179. 231. Dalt. 223, 224. 3 Mod. See the precedent cited C. Car. 118. Foſter 202.

are ſufficient overt acts of compaſſing his death. And it h
been ſtrongly holden, that any deliberate words, which ſhew
direct purpoſe againſt the king's life, as theſe, "If I meet t
king I will kill him," being ſpoken maturely and adviſedl
are ſufficient overt acts of compaſſing or imagining his death (

(10) It is ſaid, Kelynge 13, that in an indictment for "compaſſing the king's death
words may be laid as an overt act of that ſpecies of treaſon, yet Croghan's Caſe, C
Car. 333. which he cites as a precedent for this doctrine, is ſaid, by Mr. Juſtice Foſter
203. by no means to warrant the concluſion, becauſe though the words above mentio
ed were laid in that indictment, yet it further charged, that the ſpeaker actually c
into England for the purpoſe of killing the king. 1 Hale 116. And it has been h
down on more occaſions than one, ſince the Revolution, that looſe words, not relati
to any act or deſign are not overt acts of treaſon. 4 St. Tr. 581. 645. 1 Black. Rep.

Yelv. 107. 197. C. Jac. 276. 406. 413. Hutt. 75. Winch. 124. 1 Bulſt. 148. 1 Roll. 444. Foſter 202, 203, 204.

Sect. 38. And ſince the compaſſing or imagining of the kin
death is the treaſon, and words be the moſt natural means of e
preſſing the imagination of the heart, why ſhould they not
good evidence of it? Beſides, it has been often adjudge
That falſely to charge a man with ſpeaking treaſon is actionab
which could not be, if no words could amount to treaſon, as
the arguments of thoſe caſes it is clearly holden that they ma
and not ſo much as made a queſtion.

S. P. C. 2. Sum. 215. Foſ. 205, 207.

Sect. 39. Beſides it is certain, that before the 25 Edw.
words might amount to treaſon; and it is a general rule, t
in doubtful caſes the reaſon of the common law ought to gove
the conſtruction of a ſtatute. Alſo there can be no doubt b
that he, who by command or perſuaſion induces another to co
mit treaſon, is himſelf a traitor; (for without queſtion by ſu
means he would be acceſſary to a felony; and it is an uncontr
verted rule, that whatever will make a man an acceſſary
felony, will make him a principal in treaſon) and yet he d
no act but by words.

3 Inſt. 38. 1 Hale 111. Foſter 201. in notis.

Sect. 40. As to Sir Edward Coke's argument from 3 Hen.
c. 14. which makes the compaſſing the king's death, or that
any of his council, &c. by the king's ſervants, felony; fr
whence he infers, that in the judgment of this parliament,
compaſſing the king's death by bare words could not be treaſ
before; it may be anſwered, that this argument extends as w
to the king's ſervants compaſſing his death by any other act wh
ever, as to their doing it by bare words; for all are equa
within the 3 Hen. 7. and yet none will contend, but that
former hath always been treaſon.

Sum. 13. 1 Hale 115, 116. 323. 3 Inſt. 14. Foſter 201.

Sect. 41. As to the argument, that compaſſing the kin
death by bare words cannot amount to treaſon, within 25 Ed
3. becauſe many late temporary acts of parliament h
made it treaſon, which would be needleſs if it were ſo
fore; it may be anſwered, that the principal end of th
ſtatutes was to make it treaſon to charge the king with her

ſchiſm, or uſurpation, or to affirm that it was lawful to
e up arms againſt him, which the Romaniſts were apt to be
ilty of at the beginning of the reformation, and it may be
eſtioned whether theſe be overt acts of high treaſon within
Edw. 3.

Vide 2 Roll. 89. 90.

Sect. 42. Indeed it is recited in the preamble of 1 Mary, ſeſſ. c. 1. "That the ſtate of every king conſiſts more aſſuredly the love of the ſubjects towards their prince, than in the ead of laws made with rigorous pains; and that laws made for e preſervation of the commonwealth without great penalties are ore often obeyed and kept, than laws made with extreme puhments. And in ſpecial ſuch laws ſo made, whereby not ignorant but alſo the learned, minding honeſty, are often pped, yea many times for words only, without other fact or ed done or perpetrated; and thereupon the queen calls to reembrance, that many, as well honourable perſons, as others good reputation, had then of late, (for words only, without her opinion, fact, or deed) ſuffered ſhameful death, and exeſſes her pleaſure, that the ſeverity of ſuch like extreme danrous and painful laws ſhall be aboliſhed." And then follows e enacting clauſe, "That from thenceforth none act or offence, being by act of parliament or ſtatute made treaſon, petit treaſon, or miſpriſion of treaſon, by words, writing, cyphering, deeds, or otherwiſe whatſoever, ſhall be taken, had, deemed, or adjudged to be high treaſon, petit treaſon, or miſpriſion of treaſon but only ſuch as be declared and expreſſed to be treaſon, petit treaſon, or miſpriſion of treaſon, by 25 Edw. 3. Nor that any pains of death, penalty, or forfeiture, in any ways enſue to any offender for the doing any treaſon, &c. other than ſuch as by the ſaid ſtatute of 25 Edw. 3. be ordained; any ſtatute ſince the ſaid twenty-fifth year of Edw. 3. or other declaration to the contrary in any wiſe notwithſtanding."

Sect. 43. And it muſt be confeſſed, that this ſtatute, *prima facie*, ſeems very much to favour the opinion, that no ords whatſoever can of themſelves amount to overt acts of gh treaſon, inaſmuch as one of the principal miſchiefs inded to be redreſſed by it ſeems to be, that men had often ffered as traitors for words only; yet the force of this obtion will be very much leſſened, if we conſider, that the incipal purport of the ſaid ſtatute of 1 Mary ſeems to be, make the 25 Edw. 3. according to the intention of the akers of it, the only ſtandard of treaſon, and to aboliſh all ſubquent ſtatutes, which had made many offences treaſon, which ere not contained in the ſaid ſtatute of 25 Edw. 3. but no way extenuate the crimes mentioned in 25 Edw. 3. or to take way the force of any natural expoſition thereof; for the firſt rt of the preamble complains of ſuch laws as not only inſted puniſhments over ſevere for the crimes intended to be ſtrained by them, but were alſo penned in ſuch a manner,

Foſter 205. 1 Hale 111. 115. 323.

as

as to be often apt to entrap the wiſeſt by bare words. But ſurely this can no way be applicable to 25 Edw. 3. inaſmuch as the puniſhments can be thought extreme for the crimes therein reſtrained, and there can be no danger from that ſtatute of a man's being puniſhed for unwary or innocent words, inaſmuch as there is no colour to ſay, that any words as ſuch, are puniſhed within that ſtatute, but only the moſt wicked imagination of the heart, which may be ſometimes proved by the evidence of words. And it farther appears from the next part of the preamble of the ſaid ſtatute of 1 Mary that it has an eye only to ſuch ſtatutes as are above mentioned, inaſmuch as it complains of perſons having ſuffered ſhameful deaths for words only, without other opinion of fact or deed, which is very applicable to thoſe many ſtatutes of the time of Hen. 8. as 26 Hen. 8. c. 13. and 35 Hen. 8. c. 3. and ſome others, which made bare words high treaſon, many of which were ſo far from purporting a deſign againſt the king's life, that they were ſcarce otherwiſe criminal than as they were prohibited by thoſe ſtatutes. But ſurely this can have no relation to 25 Edw. 3. either in puniſhing a man for ſuch imaginations of the heart as are moſt perverſely wicked, or in ſuffering thoſe imaginations to be proved upon him from his own mouth. Alſo it is farther remarkable, that the enacting clauſe reſtrains only ſuch offences, as are made high treaſon by ſtatutes ſubſequent to 25 Edw. 3. from being adjudged high treaſon by words, writing, cyphering, &c. and ſeems to leave the offences contained in the ſaid ſtatute to the ſame conſtruction which they had before.

2 Shower 411.

Sect. 44. As to the authority of Sir Edward Coke in his third Inſtitute, it is of the leſs weight, becauſe he is ſaid to have been ſome time of the contrary opinion.

3 Inſt. 5. 14. 140.
1 Roll. 106.

Sect. 45. Neither does it appear to me, That my lord chief juſtice Hale was at all of this opinion; for though in the latter edition of his treatiſe of the Pleas of the Crown, it be ſaid, that compaſſing by bare words is not an overt-act, &c. yet in the firſt edition publiſhed in the year 1678, it is twice ſaid, that it hath been adjudged that words are an overt-act. (11)

Old Ed. 13. 16.

(11) This great queſtion, whether words only ſpoken, can amount to an overt act of compaſſing the king's death, is examined very much at length, and with great perſpicuity by lord Hale in his hiſtory of the Pleas of the Crown from p. 111. to 120. and 312. to 322. and by Mr. Juſtice Foſter from p. 196. to 207. in his diſcourſe on high treaſon, both of them concluding, againſt the aſſertions of Kelynge and the doubts of Hawkins, that bare words are not overt acts of treaſon, unleſs "uttered in contemplation of ſome "traiterous purpoſe actually on foot, or intended, and *in proſecution of it.*"

Sect. 46. The ſecond kind of high treaſon, concerning the king's office in the adminiſtration of juſtice, is expreſſed in the words following. "If a man ſlay the chancellor, "treaſurer, or the king's juſtices of the one bench or the other, "juſtices in eyre, or juſtices of aſſize, and all other juſtices "aſſigned

1 Hale 230.

ſſigned to hear and determine, being in their places during heir offices."

Sect. 47. It hath been holden, that this part of the ſtatute ll not be extended by equity, to any other high officers of e beſide theſe expreſsly named, nor even to theſe when y are not in actual execution of their offices, nor to any at- npt to kill them, nor even to the actual wounding of them, eſs death enſue. (12) Sum. 17. 3 Inſt. 18, 38. *Vide* ch. 17. ſ. 8.

(12) Therefore the barons of the exchequer, as ſuch, are not within the protection of act. 1 Hale 231.—neither do the lord keeper or commiſſioners of the great ſeal ſeem be within it by virtue of the ſtatutes 5 Eliz. c. 18. and 1 W. and M. c. 21. 4 Comm. *Sed vide* 1 Hale 231.

† But by 7 Anne c. 21. ſ. 8. to ſlay any of the lords of ſeſſion juſticiary of Scotland, in the exerciſe of their office is high aſon.

Sect. 48. The third kind of high treaſon, relating to the g's ſeal, is ſaid to have been high treaſon at the common w, and is expreſſed in the following words "And if a man counterfeit the king's great or privy ſeal." 3 Inſt. 15. S. P. C. 2, 3. 1 Hale 170. 187.

Sect. 49. It hath been holden, that theſe words extend to aiders and conſentors to ſuch counterfeiting, as well as to the tors. Kely 80. 4 Comm. 83.

Sect. 50. But not to an intent or compaſſing to do it, if it be actually done. Sum. 18.

Sect. 51. Nor to the fixing of the great ſeal to a patent, with- t a warrant for ſo doing. Con. Dalt. c. 89.

Sect. 52. Nor to the razing of the name of one manor out of patent, and putting in that of another, nor to any artificial moving of the true writing, and adding matter altogether new: r, by the better opinion, to the taking off the wax impreſſed th the great ſeal from a true patent, and fixing it to a writing rporting a grant from the king. Kely. 80. 3 Inſt. 15. 12 Co. 15, 16. 17. 3 Inſt. 15, 16. 2 Keb. 74. R. Treaſ. 3. 17. 48.

Sect. 53. Nor to the counterfeiting of the ſign manual, or ivy ſignet. But this is made high treaſon by the firſt of Mary, 2. chapter the ſixth. 1 Roll. 30. 51. 2 Roll. 50.

† And by 7 Ann. c. 21. ſ. 9. To counterfeit the ſeals uſed d continued in Scotland according to the twenty-fourth article the union, is high treaſon.

Sect. 54. The fourth kind of high treaſon concerning the in is expreſſed in theſe words, "If a man counterfeits the king's money, and if a man bring falſe money into this realm, counterfeit to the money of England, as the money called luſhburgh, or other like to the ſaid money of England, knowing the money to be falſe, to merchandize or make payment, in deceit of our ſaid lord the king and his people." Prin. P. L. 138. 143.

In

In treating hereof, I shall consider, First, The branch relating to the counterfeiting of the king's money. Secondly, concerning the bringing of false money into the realm, &c.

In treating of the first branch I shall shew, *First*, What degree of counterfeit money will amount to high treason. *Secondly* What shall be said to be the king's money within this act.

1 Hale 213, 214. 229. B. Treas. 27. Sum. 19, 20. 127. 3 Inst. 16. Con. 6 H. 7. 13. 3 H. 7. 10. 2 Inst. 375.

Sect. 55. As to the point of counterfeiting. It is said, those who coin money without the king's authority, are guilty of high treason within this act, whether they utter it or not and that those who have the king's authority to coin money, guilty of high treason, if they make it of baser alloy than they ought; and that those also are guilty of the same crime, who receive and comfort one who is known by them to be guilty thereof but that clippers, &c. are not within this statute. (13)

3 Inst. 17. Brit. f. 10. Fleta. 1. c. 22. Kely 33. Con. Dyer 296. & 213. 1 Hale

(13) To counterfeit the impression of a half guinea on a piece of gold previously hammered, not round, and not passable in the condition it then was, is not high treason, the crime is incomplete. 2 Black. 632.

3 H. 7. 10. Sum. 128. B. Treas. 19. 1 Hale 214. 373. 375.

Sect. 56. But it seems, that those, who barely utter false money made within the realm, knowing it to be false, are neither guilty of high treason, nor of a misprison thereof, but only of a high misprision: yet by 8 & 9 Will. 3. c. 26. they are in some cases made guilty of felony, for which see the next chapter.

2 Inst. 577. 3 Inst. 17. 2 Keb. 36. Dalt. c. 89. 1 Hale 195. 192. 210. to 213, 1 Burn 359. 1 Comm. 278. Fost. 227. 12 Mod. 10. Co. Lit. 107. ch. 18. s. 5.

Sect. 57. As to the second point, *viz.* What shall be said to be the king's money? It seems, That such only as is coined by the king's authority either in gold or silver within the realm and consequently not brass farthings, &c. shall come under this denomination

Sect. 58. But the mischiefs intended to be remedied by the statute, having been found by experience not to have been sufficiently redressed by it, as thus restrained, the same have been farther provided for by subsequent statutes.

1 Hale 197. T. Jones 233.

Sect. 59. For by 1 Mary, sess. 2. c. 6. "If any person or persons falsely forge and counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, and is not shall be current within this realm, by the consent of the crown, they and their counsellors, procurers, aiders and abettors shall be guilty of high treason."

3 Inst. 17. 1 Hale 376.

Sect. 60. And by 14 Eliz. c. 3. "If any person or persons falsely forge or counterfeit any such kind of coin or gold or silver, as is not the proper coin of this realm, nor permitted to be current within this realm, they and their procurers, aiders and abettors, shall be guilty of misprision of treason."

Sect.

Sect. 61. And it is enacted by 5 Eliz. c. 11. ſ. 2. "That clipping, waſhing, rounding or filing, for wicked lucre or gain ſake, of any the proper monies or coins of this realm, or the dominions thereof,—or of the monies or coins of any other realm allowed and ſuffered to be current within this realm or the dominions thereof at this preſent, or that hereafter at any time ſhall be the lawful monies or coins of this realm, or of the dominions thereof, or of any other realm, and by proclamation allowed and ſuffered to be current here by the crown, or counſelling conſenting and aiding therein, ſhall be deemed to be treaſon."

And by the 18 Eliz. c, 1. "If any perſon or perſons ſhall for wicked or lucre gain ſake, by any art, ways, or means whatſoever, impair, diminiſh, falſify, ſcale or lighten the proper monies or coins of this realm, or any the dominions thereof—or the monies or coins of any other realms allowed and ſuffered to be current at the time of the offence committed within England or any the dominions of the ſame by the proclamation of the crown, their counſellors, conſentors and aiders ſhall be adjudged offenders in high treaſon, and loſe and forfeit all their goods and chattels abſolutely, and all their lands, tenements and hereditaments during his or their natural lives only: but no corruption of blood or loſs of dower."

1 Hale 221. 328. This offence was firſt created treaſon by 3 Hen. 5. c. 6. Prin. P. L. 139.

Sect. 62. And by 8 & 9 Will. 3. c. 26. made perpetual 7 Anne c. 25. "Whoever (other than the perſons employed in the mint) ſhall knowingly make or mend, or begin or proceed to make or mend, or aſſiſt in the making or mending, of any puncheon, counterpuncheon, matrix, ſtamp, dye, pattern, or mould (14) of ſteel, iron, ſilver or other metal or metals, or of ſpaud, or fine founders earth, or ſand, or of any other materials whatſoever, in or upon which there ſhall be, or be made or impreſſed, or which will make or impreſs (15) the figure, ſtamp, reſemblance, or

Every thing neceſſary to ſhew the defendant had no authority, muſt be negatively averred in an indictment on this ſtatute. Add. P.L. 149. For the form of indictments on this ſtatute, *vide* C. Cir. Com. 167—171.

(14) Hugh Lennard was indicted for having in his poſſeſſion "one mould of lead."—nd, as the words "pattern or mould," are omitted in the laſt clauſe of this ſection of e act, it was ſubmitted to the opinion of the judges.—Firſt, whether "a mould" is omprized under the general words "other tool or inſtrument above mentioned." And condly, If it be ſo comprized, whether it ſhould not be deſcribed in the indictment as "tool or inſtrument," mentioned in the ſtatute. They were unanimous, Firſt, that is mould was a tool or inſtrument mentioned in the former part of the ſtatute, and erefore comprized under the general words. And ſecondly, that as it is expreſsly menoned by name in the firſt clauſe, with reſpect to the making or mending, it need not e averred to be a tool or inſtrument ſo mentioned. Black. 809.

(15) So alſo in the ſame caſe, a doubt aroſe whether a mould, having only the reſemblance f the coin inverted, was not an inſtrument which would *make and impreſs* the reſemblance ther than one on which the *reſemblance* was made and impreſſed, (which was the way it as laid in this indictment,) the ſtatute ſeeming to diſtinguiſh between ſuch as will *make impreſs* the ſimilitude, &c. as a matrix, dye or mould, and ſuch on which the ſame is *ade or impreſſed*, as a puncheon, &c. A great majority of the judges thought the indictent good, becauſe the *ſtamp* of the coin was *certainly* impreſſed on the mould, but they ought it would have been more accurate had it charged "a mould that would make and impreſs the ſimilitude, &c. And in this opinion, ſome who otherwiſe doubted acquieſced.—Black. 822.—But an inſtrument which would make or impreſs the figure of only part of one ſide of the coin, is not within the ſtatute. P. R. H. 371.

" or ſimilitude, of both, or either of the ſides or flats of a
" gold or ſilver coin current within this kingdom.—Or ſh
" knowingly make or mend, or begin or proceed to make
" mend, or aſſiſt in the making or mending, of any edger
" edging tool, inſtrument or engine, not of common uſe in
" trade, but contrived for making of money round the ed
" with letters, grainings, or other marks or figures, reſe
" bling thoſe on the edges of money coined in his majeſ
" mint—Or any preſs for coinage—Or any cutting eng
" for cutting round blanks, by force of a ſcrew, out of flat
" bars of gold, ſilver, or other metal,—or ſhall knowingly b
" or ſell hide or conceal, &c. without lawful authority or ſu
" cient excuſe for that purpoſe, knowingly have in their houſe
" cuſtody or poſſeſſion any ſuch puncheon, counterpunche
" matrix, ſtamp, dye, edger, cutting inſtrument or other to
" or inſtrument before mentioned —— their counſellors, proc
" rers, aiders and abettors, ſhall be adjudged guilty of hig
" treaſon—But without corruption of blood, or loſs of dower.
" ——And by 7 Anne c. 25. ſ. 2. the proſecution of ſuch
" offend againſt this act by making or mending, or beginning
" proceeding to make or mend any coining tool or inſtrume
" therein prohibited or by making of money round the edg
" with letters or grainings may be commenced at any ti
" within ſix months."

This is an offence at common law, and puniſhable as a miſdemeanor. B. R. H. 371. Str. 1074.

But an offender attainted upon this ſtatute, ſhall forfeit his lands. Salk. 85.

And by par. 2. " Whoever ſhall knowingly convey or a
" in conveying out of the mint, any tool or inſtrument uſed
" or about the coining of monies there, or any uſeful part
" ſuch tools or inſtruments.—Or whoever (other than the pe
" ſons employed in the mint,) ſhall mark on the edges any
" current coin of this kingdom, or of the diminiſhed coin of th
" kingdom,—or any counterfeit coin reſembling the coin of th
" kingdom, with letters or grainings, or other marks or figur
" like unto thoſe on the edges of money coined in his majeſty
" mint, their counſellors, procurers, aiders and abettors ſha
" ſuffer death as in caſe of high treaſon."—And by par.
" whoever ſhall colour, gild or caſe over with gold or ſilve
" or with any waſh, or materials producing the colour (16)
" gold or ſilver, any coin reſembling any the current coin of th
" kingdom,—or any round blanks of baſe metal, or of coar
" gold, or coarſe ſilver of a fit ſize and figure to be coined in
" counterfeit milled money reſembling any the gold or ſilver co
" of this kingdom.—Or ſhall gild over any ſilver blanks of a
" ſize and figure, to be coined into pieces reſembling the curre
" gold coin of this kingdom, their counſellors, procurers, aide
" and abettors ſhall ſuffer death as in high treaſon.

Proſecution to be in three months. ſ. 9.

(16) It has been reſolved upon this clauſe of the ſtatute, that it is immaterial whet
the colouring is effected immediately, by ſome external and ſuperficial application, or a
latently by extraction from the application of *Aqua fortis*, or other chymical powe
Rex. v. Lacy and Parker. O. B. 6. Dec. 1776.

Sect. 63. And by ſ. 5. If any tool, inſtrument, or engine d or deſigned for coining or counterfeiting gold or ſilver mo-, or any part of ſuch tool or engine, ſhall be hid or conceal- in any place, or found in the houſe, cuſtody or poſſeſſion of perſon not then employed in the mint, the ſame may be ed and carried forthwith to ſome juſtice of the county or place e produced in evidence at the trial of the offender; and defaced and deſtroyed.—And all falſe money which ſhall ſo produced, ſhall be cut in pieces. Cro. Cir. Com. 171.

Sect. 64. † And by 15 Geo. 2. c. 28. it is enacted, "That if any perſon whatſoever, ſhall waſh, gild, or colour any of the lawful ſilver coin, called a ſhilling, or a ſixpence, or any counterfeit (17) or falſe ſhilling or ſixpence, or add to, or alter the impreſſion, or any part of the impreſſion of either ſide of ſuch lawful or counterfeit ſhilling or ſixpence, with intent to make ſuch ſhilling or ſixpence reſemble or look like or paſs for a piece of lawful gold coin called a guinea or half a guinea reſpectively.—Or ſhall file or any wiſe alter, waſh, or colour any of the braſs monies called halfpennies or farthings, or add to, or alter the impreſſion, or any part of the impreſſion, of either ſide of a halfpenny or farthing, with an intent to make ſuch halfpenny or farthing reſemble or look like, or paſs for a lawful ſhilling or ſixpence reſpectively. Such offenders, their counſellors, aiders, abettors and procurers ſhall be guilty of high treaſon." For the rewards given by ſtatute for the apprehending and convicting of felons, *vide* b. 2. c. 12. ſ 25.—And for diſcoverers who are intitled to pardon, b. 2. c. 37. ſ. 4.

(17) The counterfeit money muſt be like the true money; for the word counterfeit lies reſemblance or likeneſs; and without it, there is very little danger of impoſition or id. 1 Hale 184. 215. 5 Bac. Abr. 129.

Sect. 65. As to the ſecond branch, concerning the bringing e money into the realm, the following particulars are obſerva- First, That the money ſo brought muſt be counterfeited ording to the ſimilitude of Engliſh money. But by 1 & 2 l. & Mar. c. 11. "It is made high treaſon to bring into the ealm money counterfeited according to the ſimilitude of foeign coin current here, to the intent to merchandize therewith." 1 Hale 225. 228, 229. 317. Sum. 21. S. P. C. 3. Foſter 227.

Sect. 66. Secondly, That it muſt be brought by one, who ws it to be falſe.

Sect. 67. Thirdly, That it muſt be brought from a foreign ion, and not from Ireland, or other place ſubject to the wn of England, for tho' to ſome purpoſes they be diſtinct from realm of England, and conſequently money brought from ce may, within the letter of the ſtatute, be ſaid to be ught into the realm, yet inaſmuch as the counterfeiting uniſhable there by the laws of our king, as much as in Eng-, the bringing money from ſuch places has been conſtruo be no more within the act than if they were actually in land. 1 Hale 225, 226. 317. 3 H. 7. 10. S. P. C. 3. 3 Inſt. 18. Sum. 12. B. Treaſ. 19. Dalt. 89. ſ. 225.

Sum. 21. 3 Inſt. 18. ch. 18. ſ. 4.

Sect. 68. Fourthly, That the bare uttering of ſuch money here, by one who brought it not over, is not within this branch. But by force of an ancient ſtatute, if falſe money be found in the hands of a ſuſpicious perſon, he may be arreſted till he have found his warrant.

3 Inſt. 18. Sum. 21.

Sect. 69. Fifthly, That it is not neceſſary that ſuch falſe money be actually paid away or merchandized withal, for the words are, to merchandize or make payment, &c. which only import an intention to do ſo, and are fully ſatisfied whether the act intended be performed or not. But *quære*, becauſe both Coke and Hale ſeem to hold otherwiſe. However it is clear, that bringing over money counterfeited according to the ſimilitude of foreign coin is treaſon within 1 & 2 Phil. & Mar. c. 11.

Sect. 70. Alſo in the ſaid ſtatute of 25 Edw. 3. there is this clauſe, "And becauſe that many other like caſes of treaſon may "happen in time to come, which a man cannot think nor declare "at this preſent time, it is accorded, that if any other caſe "ſuppoſed treaſon, which is not above ſpecified, doth happen "before any juſtices, the juſtices ſhall tarry without any going "to judgment of the treaſon, till the cauſe be ſhewed and de"clared before the king, and his parliament, whether it ought "to be judged treaſon or other felony."

1 Hale 308. 3 Inſt. 8. 12 Co. 16.

Sect. 71. By virtue of this clauſe, many offences which are not high treaſon within this ſtatute, as the murder of an ambaſſador, &c. were declared by the parliament to be high treaſon. But theſe and all other ſuch like declarations are made void by 1 Mary c. 1. And it ſeems that the parliament have no ſuch power at this day by virtue of the ſaid clauſe, inaſmuch as the ſaid ſtatute of 1 Mary expreſsly enacts, "That no offence ſhall be "deemed high treaſon, but only ſuch as is declared and expreſ"ed to be ſo by 25 Edw. 3." and takes no notice of the ſaid clauſe relating to the parliament.

And now we are come to offences, which have been made high treaſon ſince the ſaid ſtatute of 1 Mary. And in treating of theſe, we ſhall conſider, Firſt, Offences in upholding or favouring the power of the pope. Secondly, Offences againſt the proteſtant ſucceſſion. Thirdly, Offences of liſting men without the king's licence.

And firſt, Offences in upholding or favouring the power of the pope ſeem reducible to the following heads: *Firſt*, Extolling the pope's power. *Secondly*, Putting in ure popiſh bulls. *Thirdly*, Perverting others, or being perverted to popery. *Fourthly*, Receiving popiſh orders or education in popiſh ſeminaries, and not ſubmitting, &c. *Fifthly*, Refuſing a ſecond tender of the oaths.

Sect. 72. And firſt, The offence of extolling the pope's power made high treaſon by 5 Eliz. c. 1. ſ. 2. 10. by which it is acted, "That if any perſon within the queen's dominions, ſhall by writing, cyphering, preaching or teaching, deed or act, adviſedly and wittingly hold or ſtand with, extol or ſet forth, maintain or defend, the juriſdiction of the biſhop of Rome heretofore claimed in this realm, or by any ſpeech, open deed or act, willingly or adviſedly attribute any ſuch authority to the ſee of Rome, he ſhall be guilty of a *præmunire* by the firſt offence, of high treaſon by the ſecond, but without corruption of blood or loſs of dower." See 1 Hale 331. 332. Prin. P. L. 144.

Sect. 73. It has been holden, That he, who knowing the ſect of a book written beyond ſea, brings it over and ſecretly lls it, and alſo, That he, who by report hearing the contents ereof commends it, and alſo, That he, who knowing its conts ſecretly conveys it to a friend with an intent to pervert m, is in danger of the ſtatute; and it has been reſolved, That who having read the book does afterwards in diſcourſing of allow it to be good; and alſo, That whoever writes or ints ſuch a book, and after publiſhes it, is clearly guilty: t it is ſaid, That he, who having heard of the contents, barebuys and reads the book, is not within the ſtatute. Dyer 282.

Sect. 74. It has alſo been holden, That if one who is conted and condemned for an offence of this nature, being afterrds demanded by the judges, whether he be ſtill of the ſame inion? anſwer, that he is, he is guilty of high treaſon, as ving adviſedly maintained the pope's power a ſecond time. Two of the judges diſſented from this opinion. Sav. 46.

Sect. 75. The ſecond offence of this kind, *viz.* That of tting in ure a popiſh bull, is made high treaſon by 13 Eliz. 2. ſ. 2. 3. By which it is enacted, "That if any within the queen's dominions ſhall put in ure any bull or inſtrument of abſolution or reconciliation obtained from the ſee of Rome, or ſhall take upon him by colour thereof, to abſolve or reconcile any perſon, or to grant or promiſe any abſolution or reconciliation, or ſhall willingly receive any ſuch abſolution or reconciliation, or ſhall obtain from the ſee of Rome any bull or writing whatſoever, or publiſh, or any ways put the ſame in ure, he is guilty of high treaſon. And by ſ. 4 acceſſaries after the offence incur a *præmunire*. Ann by ſ. 5, 6. Thoſe who within ſix weeks diſcloſe not an offer of ſuch bulls, &c. to ſome privy counſellor, &c. are guilty of miſpriſion of treaſon." Prin. P. L. 144.

Sect. 76. The third offence of this kind, *viz.* That of erverting others, or being perverted to popery, is made high eaſon by 23 Eliz. c. 1. ſ. 2. & 3 Jac. 1. c. 4. ſ. 22, 23. by hich it is enacted, "That if any one ſhould pretend to have 1 Hale 337, 338. 11 Mod. 51. 114. Rex. v. Bolton. Mich. 26 Geo. 3.

Form of indictment. Cro. Cir. 573.

" power, or ſhall put in practice to withdraw a ſubject from his
" natural obedience to the king, or to withdraw them for the
" intent, to the Romiſh religion, or to move to promiſe any obe-
" dience to any foreign power, or to do any overt-act to the
" intent or to reconcile one to the ſee of Rome, and if any per-
" ſon ſhall by any means be willingly withdrawn, or promiſe
" obedience as aforeſaid, he is guilty of high treaſon."

Cawley 187.

Sect. 77. But by 3 Jac. 1. c. 4. " If any perſon who is re-
" conciled to the ſee of Rome beyond the ſeas, return into the
" realm and ſubmit himſelf, &c. and take the oaths within ſix
" days after his return, he is excuſed."

The caſe of Campion the Jeſuit and others. Savil 3.

Sect. 78. It ſeemeth that the bare pretending to ſuch a pow-
er, without any farther act in endeavouring to perſuade perſons
from their allegiance, or the bare endeavouring ſo to perſuade
them, without any pretence of ſuch a power, is high treaſon
within theſe acts.

Hale 336, 337.

Sect. 79. The fourth offence of this kind, *viz.* That of
receiving popiſh orders or education, &c. is made high treaſon
by 27 Eliz. c. 2. ſ. 3. by which it is enacted, " That if any of
" cleſiaſtick, born in the queen's dominions, and ordained or
" profeſſed by popiſh authority, ſhall remain in the queen's do-
" minions, or come from beyond ſea, and not ſubmit to ſome
" biſhop or juſtice of peace within three days, and take the
" oaths, &c. he ſhall be guilty of high treaſon."

Sect. 80. And by ſ. 15. " If any ſubject, not being an ec-
" cleſiaſtick, ſhall not return from a popiſh ſeminary within
" ſix months after a proclamation to that purpoſe in London, and
" ſubmit, &c. within two days, he ſhall be guilty of high trea-
" ſon, whenever he ſhall otherwiſe return."

Sect. 81. And by ſ. 13. " If any ſubject ſhall know that
" any ſuch prieſt is within the realm, and not diſcover him to
" ſome juſtice of peace, &c. within twelve days, he ſhall be
" fined and impriſoned at the queen's will; and if any juſtice
" of peace, &c. to whom ſuch matter ſhall be diſcovered, ſhall
" not give information to ſome of the privy council, &c. within
" in twenty-eight days, he ſhall forfeit two hundred marks."

Pop. 94.

Sect. 82. In the conſtruction of this ſtatute it hath been re-
ſolved, Firſt, That in an indictment grounded on this ſtatute againſt
a prieſt remaining here beyond the time limited by the ſtatute,
it muſt be alledged, that he was born in the realm, &c. and alſo
that he was ordained, &c. by authority challenged or pretended
from the ſee of Rome; but that there is no need to ſhew in what
place in particular he was born, or whether he were ordained
within the realm, or beyond ſea.

Ray. 377.

Sect. 83. Secondly, That one in popiſh orders, being in a
ſhip in order to go to Ireland, and driven by a ſtorm into
England, and immediately apprehended, is not guilty of high
treaſon

reaſon within this act; for his deſign of going to Ireland was prevented, *& nil efficit conatus, niſi ſequatur effectus*, and he was forced into England by the act of God, and againſt his will; neither can he be ſaid to remain here within the intent of the ſtatute, becauſe he was compelled to it by reaſon of the proſecution.

Sect. 84. The fifth offence of this nature, *viz.* that of refuſing a ſecond tender of the oaths, is made high treaſon by 5 Eliz. c. 1. ſ. 11, 12 & 20. by which it is enacted, "That if any perſon, who ſhall have a charge, cure, or office in the church, or an office or miniſtry in an eccleſiaſtical court, or if any perſon who ſhall wilfully refuſe to obſerve the rites of the church of England, after having been admoniſhed by the ordinary, &c. or that ſhall ſay or hear private maſs, &c. ſhall refuſe a ſecond tender of the oaths, he ſhall be guilty of high treaſon, but without corruption of blood." Vide infra, c. 19. See 1 W. & M. c. 8.

Sect. 85. Secondly, offences againſt the proteſtant ſucceſſion made high treaſon are twofold: Firſt, denying the power of the parliament to limit the ſucceſſion of the crown, which is made high treaſon, by 4 Annæ c. 8. ſ. 1, 2. and 6 Annæ c. 7. ſ. 1, 2. whereby it is enacted, "That whoever ſhall maliciouſly, adviſedly, and directly, by writing or printing, declare, maintain and affirm, that the pretended prince of Wales, or any other, hath any right or title to the crown, otherwiſe than according to 1 Will. & Mary, ſeſſ. 2. c. 2. or 11 & 12 Will. 3. c. 2. or that the king's of this realm, by authority of parliament, are not able to make laws to limit and bind the crown and the deſcent and government thereof, ſhall be guilty of high treaſon, and that thoſe that maliciouſly and directly affirm the ſame by preaching, teaching, or adviſed ſpeaking, ſhall be guilty of a *præmunire*." Prin. P. L. 145. See the caſe of John Mathews, convicted and executed upon this ſtatute, 9 St. Tr. 715. O. B. Oct. Seſſions 1709.

Secondly, Endeavour maliciouſly, adviſedly and directly to hinder any perſon, who ſhall be next in ſucceſſion, according to 1 Will. & Mary, and 12 Will. 3. which is made high treaſon by 1 Annæ, c 17.

Sect. 86. It is alſo enacted by 13 Will. 3. c. 3. it is recited, "That the ſaid pretended prince of Wales had aſſumed the title of king of Great Britain, in manifeſt violation of the lawful and rightful title to this realm; and that the ſaid traitor may be brought to condign puniſhment," it is ordained, "that he ſtand and be convicted and attainted of high treaſon."—And it is alſo enacted,, "That if any ſubjects of the crown of England, ſhall hold any correſpondence whatſoever with the ſaid pretended prince of Wales, or by 17 Geo. 2. c. 39. with the ſons of the ſaid pretender, or knowingly with any perſon employed by him or them

" or ſhall remit or pay any money for his or their uſe or ſervi
" ſhall be guilty of high treaſon.

Vide 9 Will. 3. c. 1.

1 Hale 339, 340. and for the offence of enliſting men for the ſervice of any foreign prince vide next chapter ſ. 11.

Sect. 87. It is alſo further enacted by 2 & 3 Annæ, c. 2
ſ. 34. " That if any officer or ſoldier ſhall hold correſponden
" with any rebel or enemy, or give them advice or intelligen
" either by letters, meſſages, ſigns, tokens, or otherwiſe,
" ſhall treat, or enter into any condition with them, with
" authority ſo to do, he ſhall be guilty of high treaſon."

CHAPTER THE EIGHTEENTH.

OF FELONIES MORE IMMEDIATEL AGAINST THE KING.

FELONIES more immediately againſt the king are
five kinds:—Firſt, Offences relating to the coin or bull
on.—Secondly, Offences againſt the king's council.—Third
The offence of paſſing beyond ſea to ſerve a foreign prince.
Fourthly, Imbezilling the king's armour.—Fifthly, The offen
of relieving a popiſh prieſt.

Felonies relating to the coin or bullion (1) are of three kind
—Firſt, The offence of debaſing it.—Secondly, The offence
unlawfully diminiſhing it.—Thirdly, The offence of ende
vouring by extraordinary means to increaſe it.

(1) Bullion is the ore or metal whereof gold is made, and ſignifies with us either go
or ſilver in the maſs. 9 Edw. 3. c. 2. The king by virtue of his prerogative is entit
to all mines from which it is produced. 2 Inſt. 577. Plow. 336. in order to ſupply materi
for the coin of the kingdom. 1 Com. 294. This coin muſt be made of ſterling or ſtand
metal, 25 Edw. 3. (Cowp. 279.) It conſiſts at preſent of two carrats of copper, melted wi
twenty-two carrats of fine gold.—And eighteen penny weights of copper, melted with e
ven ounces and two penny weights of fine ſilver reſpectively. Ward's Math. 118. 12 G
2. c. 26. Even the king's prerogative Sir Edward Coke thinks, does not extend to
alteration of the ſtandard. 2 Inſt. 577. Hale ſays, it is neither ſafe nor honourable
debaſe the coin below ſterling, 1 vol. 197. and Blackſtone apprehends that in legitima
even foreign coin, the value ſhould be fixed comparatively with our own ſtandard, or
conſent of parliament will be neceſſary, 1 Comm. 278. And the legiſlature appear
have been ever extremely anxious to preſerve the ſtandard of the coin and bullion pu
and unadulterated. Vide 13 & 14 Car. 2. 31. 8 Will. 3. c. 8. 6 Geo. 1. c. 11. 12 G
2. c. 26. 9 Geo. 3. c. 37. 14 Geo. 3. c. 42. 16 Geo. 3. c. 46. 18 Geo. 3. c.
and the references there cited.

4 Com. 98.

Sect. 1. And firſt, The offence of debaſing the coin
bullion was provided againſt by many ancient ſtatutes, whi
ſeem to be obſolete at this day; for the importation of
money was made felony by 17 Edw. 3. n. 15. (which w
never printed,) and ſo was the payments of blanks, (whi
were made of baſe alloy,) by 2 Hen. 6. c. 9. and the coin

3 Inſt. 92, 93.

r bringing in galley halfpence, feſkins or doydekins, by 3 Hen. . c. 1. However it is made high treaſon to bring in falſe money, c. by 25 Edw. 3. and 1 & 2 Ph. & Mar. c. 11.

Sect. 2. And it is enacted by 8 & 9 Will. 3. c. 26. ſ. 11. made perpetual by 7 Anne, c. 25. ſ. 3. "That whoever ſhall blanch copper for ſale, or mix blanched copper with ſilver, or knowingly buy or ſell, or offer to ſale blanched copper alone or mixed with ſilver, and ſhall knowingly or fraudulently buy or ſell, or offer to ſale any malleable compoſition or mixture of metals or minerals which ſhall be heavier than ſilver, and look, and touch, and wear like ſtandard gold, but be manifeſtly worſe than ſtandard; or ſhall take, receive, pay, or put off any counterfeit milled money, or any milled money whatſoever unlawfully diminiſhed, and not cut in pieces at or for a lower rate or value than the ſame by its denomination doth or ſhall import, or was coined or counterfeited for, ſhall be guilty of felony." 4 Comm. 98. 1 Hale 214.

Sect. 3. And by 9 & 10 Will. 3. ſ. 21. "Any perſon to whom any ſilver money, and by 13 Geo. 3. c. 71. any perſon to whom any gold money, ſhall be tendered, which ſhall be diminiſhed otherwiſe than by reaſonable wearing, or which from the appearance of it, he ſhall ſuſpect to be counterfeited, may cut, break or deface the ſame; but if the ſame ſhall afterwards appear to have been lawful money, the perſon who cut, &c. ſhall take the ſame, at the rate it was coined for; and every queſtion reſpecting the validity of ſuch coin, ſhall be finally determined by the chief magiſtrate of the place.—And by 8 & 9 Will. 3. c. 26. ſ. 5. ſuch ſpurious money, produced in a court of juſtice, ſhall be deſtroyed in open court.

Sect. 4. It is alſo further enacted, by 15 Geo. 2. c. 28. ſ. 2. That whoever ſhall utter or tender in payment any falſe or counterfeit money knowingly, ſhall ſuffer ſix months impriſonment, and find ſureties for good behaviour for ſix months more; and on being convicted a ſecond time for the like offence, ſhall ſuffer two years impriſonment and find ſureties, &c. for two years more; and if the ſame perſon ſhall offend in like manner a third time, he ſhall ſuffer death without clergy." It is alſo further enacted by ſ. 3. "That whoever ſhall knowingly utter or tender in payment any falſe or counterfeit money, and ſhall either the ſame day, or within the ſpace of ten days then next, utter or tender in payment any more or other falſe or counterfeit money; or ſhall at the ſame time have in his cuſtody, one or more pieces of counterfeit money beſides what was ſo uttered or tendered, ſhall ſuffer one year's impriſonment and give ſecurity, &c. for two years more; and if ſuch perſon ſhall offend in like manner a ſecond time, he ſhall ſuffer death without clergy, provided the proſecution be within ſix months."—And it is further enacted by ſ. 4. "That whoever ſhall make, coin, or counterfeit any braſs or copper money 1 Hale 195, 211. 1 Burn. 367.

"ney called a halfpenny or a farthing, their aiders, &c. shall
"suffer two years imprisonment, and find surety, &c. for two
"years more."

Sect. 5. And it is further enacted, by 11 Geo. 3 c. 40.
"That whoever shall make, coin, or counterfeit any of the cop-
"per monies of this realm commonly called an halfpenny or a
"farthing, his counsellors, aiders, abettors, and procurers shall
"be adjudged guilty of felony."——And it is further enacted
by s. 2. "That whoever shall buy, sell, take, receive, pay, or
"put off any counterfeit copper money, not milled down or cut
"in pieces, at or for a lower rate or value, than the same by
"its denomination, doth or shall import or was counterfeited
"for, shall be guilty of felony."—And by s. 3. "Any one
"justice of the peace, on complaint upon oath of one witness
"by warrant under his hand may cause the houses, &c. of sus-
"pected counterfeiters to be searched for the tools and imple-
"ments for coining such copper monies, in order to produce
"them in evidence against the offenders as aforesaid"

O. B. 1784. p. 484.

Poph. 149. Hob. 270.

Sect. 6. Secondly, The offence of diminishing the coin or bullion of the kingdom has been always thought to be of very ill consequence, as tending to impoverish the nation, and to embarrass trade, and with an eye to those inconveniences it was made felony by 17 Edw. 3. n. 15. (which was never printed) to transport silver, except plate carried over by great men to serve their houses; also the transportation thereof was prohibited by many other statutes, as 27 Edw. 3. c. 14. 5 Rich. 2. c. 2. 2 Hen. 4. c. 16. 2 Hen. 6. c. 6. and 3 Hen. 8. c. 1. But this general restraint being found by experience to be inconvenient to trade; which by exporting money to one market may bring back such goods, as will more than make up the loss, from another, it was enacted by 15 Car. 2. c. 7. s. 12. "That any
"person might export any foreign coin or bullion without duty,
"first making an entry thereof in the custom-house."

3 Inst. 92, 93.

Sect. 7. But this licence having been often abused by the transportation of such silver, which having been coined into English money or wrought into plate, was afterwards melted down into the form of foreign coin or bullion, it was, in order to prevent this mischief, enacted by 6 & 7 Will. 3. c. 17. s. 3. "That none shall cast or make ingots or bars of
"silver in imitation of Spanish under pain of five hundred
"pounds." And it is further enacted by the said statute, s. 5. "That no person shall transport, or cause to be
"transported, any molten silver, but only such as shall be
"marked or stamped at Goldsmith's Hall, &c. nor even
"that without a certificate under the hands of one of the
"wardens of the Goldsmith's Company, that oath hath been
"made by the owner or owners thereof, and likewise by
"one credible witness, that the same is lawful silver; and
"that no part thereof was (before the same was molten) the
"current

current coin of this realm, nor clippings thereof, nor plate wrought within this kingdom, &c."

Sect. 8. Alſo it is farther enacted, ſ. 6. "That any officer of the cuſtom-houſe may ſeize any molten ſilver, which ſhall be put on board any veſſel, without having ſuch mark or ſtamp, and alſo ſuch certificate, as is above mentioned."

Sect. 9. And it is farther enacted, ſ. 7. "That if any broker, not being a trading goldſmith, or refiner of ſilver, ſhall buy or ſell any bullion or molten ſilver, he ſhall ſuffer impriſonment for ſix months without bail."

Sect. 10. Alſo it is farther enacted, ſ. 13, 14. "That if any doubt ſhall ariſe upon bullion ſhipped to be exported, whether the ſame be Engliſh or foreign, the proof ſhall be upon the owner, &c. And that if any perſon ſhall enter or ſhip any bullion, by the ſaid act allowed to be exported, other than in the name of the true owner, proprietor or importer, the exporter ſhall forfeit the ſame, or the full value thereof."

Sect. 11. Alſo it is farther enacted by 7 and 8 Will. 3. c. ſ. 6. "That no perſon ſhall ſhip or cauſe to be ſhipped, any molten ſilver, or bullion whatſoever, unleſs a certificate be firſt had and obtained from the court of the Lord Mayor and Aldermen of the city of London, oath having been made, before the ſaid court, by the owners and two witneſſes, that the ſame was and is foreign bullion, and that no part thereof was the coin of this realm or the clippings thereof, nor plate wrought within the kingdom, &c. which oath, &c. the ſaid court ſhall (circumſtantially) certify to the commiſſioners of the cuſtoms, before any cocket ſhall be granted for ſhipping the ſame; on pain to the owner of loſs of the goods and forfeiting double the value. To the captain the ſhip, and 200l. and if in the king's ſervice, the loſs of command. To the cocket officer 200l. and loſs of office."

By 20 Geo. 3. c. 18. Gold and ſilver coin may be exported to Ireland.

Sect. 12. Thirdly, The endeavours of ſome perſons in making uſe of extraordinary methods for the producing of gold and ſilver, were found by experience to be ſo prejudicial to the publick, both from the laviſh waſte of many valuable materials, and alſo from the ruin of many families, which had been occaſioned by ſuch uſeleſs expences, that it was thought neceſſary to put a check to ſuch practices by ſome ſevere law, and for that purpoſe it was made felony, by 5 H. 4. c. 4. "To multiply gold or ſilver, or to uſe the art or craft of multiplication." And it was holden, That the practiſing to find out the Philoſophers Stone, by which it is imagined that all metals may be made gold, was felony within this ſtatute: but this reſtraint having been found to have

1 Hale 644. Dyer 88.

have no other effect, upon the accountable vanity of thoſe
fancied ſuch attempts to be practicable, but only to ſend
beyond ſea, to try their experiments with impunity in
countries, the ſtatute of 5 Hen. 4. was at laſt wholly repe
by 1 Will. & Mary c. 30.

4 Comm. 100. 3 Comm. 332. Ante ch. 17.

Sect. 13. As to the ſecond kind of felonies more immedi
ly againſt the king, *viz.* thoſe which are againſt his co
it is enacted by 3 Hen. 7. c. 14. "That if any ſworn ſer
"in the chequer-roll of the king's houſhold, under the ſta
"a lord, make any confederacy, compaſſing, conſpiracy
"imagination with any perſon, to deſtroy or murder the
"or any lord of this realm, or any other perſon ſworn to
"king's council, he ſhall be guilty of felony."

1 Hale 230. 4 Comm. 84.

Sect. 14. And it is farther enacted by 9 Annæ, c.
"That if any perſon ſhall attempt to kill, aſſault, ſtrik
"wound any privy counſellor in execution of his office,
"ſhall ſuffer as a felon without clergy."

3 Inſt. 80. Dalt. c. 107. Cawl. 182.

Sect. 15. As to the third offence of this kind (*viz.*) T
of paſſing beyond ſea to ſerve a foreign prince, it is ena
by 3 Jac. 1. c. 4. ſ. 18, 19, 20, 21. "That every ſubj
"who ſhall go out of the realm to ſerve any foreign pr
"or ſtate, or ſhall paſs over the ſeas, and there volunt
"ſerve any ſuch foreign prince or ſtate, not having before
"going taken the oath of obedience (a) ſhall ſuffer as a fe
"and that if any gentleman, or perſon of higher degree,
"any perſon who hath born any office or charge in camp
"army, ſhall go out of the realm to ſerve ſuch foreign pr
"&c. without being bound with two ſureties in a bond,
"ditioned, that he ſhall not be reconciled to the ſee of Ro
"nor enter into any conſpiracy againſt the king, he ſhall
"a felon."

(a) N. B. This oath of obedience is taken away by 1 Will. and Mary, ſeſſ. 1 c. 8. ſ. 2. and the new oaths of allegiance and ſupremacy enjoined in the room thereof. Vide c. 20. ſ. 41.

Sect. 16. † And it is enacted by 9 Geo. 2. c. 30. "T
"if any ſubject of the crown of Great Britain ſhall wi
"Great Britain or Ireland, inliſt or enter himſelf, or
"any perſon ſhall procure any ſubject of his majeſty,
"enter or enliſt himſelf, or hire or retain ſuch perſon
"an intent to cauſe him to enliſt or enter himſelf, or
"cure any ſubject to go beyond the ſeas, or embark wit
"intent, and in order to be enliſted to ſerve any for
"prince, &c. as a ſoldier, without licence ſo to do under
"ſign manual, (although no enliſting money hath been
"ſhall be actually paid to or received by him, 29 Geo.
"c. 17. ſ. 4.) ſuch offender ſhall be guilty of felony wit
"clergy.—Unleſs within fourteen days he voluntarily
"cover upon oath the perſon by whom he was ſo enli
"inviegled or enticed as aforeſaid, ſo as he may be appreh
"ed and convicted."

Sect.

Sect. 17. † Alſo it is further enacted by 29 Geo. 2. c. 17. That if any ſubject of the crown ſhall take or accept of any military commiſſion or otherwiſe, enter into the military ſervice of the French king, as a commiſſioned or non-commiſſioned officer without ſuch licence as aforeſaid, he ſhall ſuffer death as a felon without clergy."

Vide alſo 18 Hen. 6. 2. 19. 5 Eliz. c. 5. 2 & 3 Edw. 6. c. 2. by which deſertion in time of war is made a capital crime.

And it is alſo enacted, ſ. 5. "That if any ſubject ſhall accept of commiſſions in the Scotch brigade, in the ſervice of the States General, &c. he ſhall, within ſix months from the date of his commiſſion, take and ſubſcribe the oaths of allegiance and abjuration, and tranſmit a certificate thereof to the Secretary at War, &c. or on default thereof ſhall forfeit five hundred pounds, one moiety to the king, the other to the proſecutor, &c."

And it is further enacted by 1 Geo. 1. c. 47. "That if any perſon ſhall perſuade a ſoldier to deſert, he ſhall forfeit the ſum of forty pounds, ſuffer ſix months impriſonment, and be ſet on the pillory."

For the offence and puniſhment of ſeducing artificers, &c. Vide Index title Artificer.

Sect. 18. As to the fourth offence of this kind, *viz.* That embezilling the king's armour, it is enacted by 31 Eliz. c. 4. "That if any perſon having the charge or cuſtody of the king's armour, ordnance, or munition, &c. or of any victuals provided for the victualling of any ſoldiers or mariners, &c. ſhall for lucre and gain, or wittingly, advifedly and of purpoſe to hinder or impeach the king's ſervice, imbezil, purloin, or convey away any of the ſame armour, &c. to the value of twenty ſhillings, he ſhall be adjudged guilty of felony." But ſuch offender muſt be proſecuted within the year next after the offence done; neither ſhall he forfeit his hereditaments any longer than during his life; nor ſhall his blood be corrupted, or his wife loſe her dower,

4 Comm. 101. 4 Burn 254. 3 Inſt. 78. Cawley 90. The benefit of clergy is taken from this offence and from the offence of ſtealing the king's naval ſtores, to the value of twenty ſhillings, by 22 Car. 2. c. 5. And for the preſervation of the

ſtores, and the mode of trial and puniſhment of peculations under the value of 20s. 9 & 10 Will. 3. c. 41. 5 Geo. 1. c. 25. 9 Geo. 1. c. 28. 17 Geo. 2. c. 40. ſ. 9 Geo. 3. c. 30. ſ. 15. L. Ray. 1104.

Sect. 19. And it is alſo enacted by 12 Geo. 3. c. 24. That whoever ſhall either within this realm, or in any of the countries or places thereunto belonging, wilfully and maliciouſly ſet on fire and burn, or otherwiſe deſtroy, or ſhall cauſe the ſame to be done, or ſhall aid or aſſiſt in the ſetting on fire, burning or otherwiſe deſtroying of any of his majeſty's ſhips or veſſels of war, whether on float or building in any of his majeſty's dock yards, or building or repairing by contract in any private yards for the king's uſe.—Or any of his majeſty's arſenels, magazines, dock yards, rope yards, victualling offices, or any of the buildings erected therein, or belonging thereto; or any timber or materials there placed, for building, repairing, or fitting out of ſhips or veſſels; —Or any of his majeſty's military, naval, or victualling ſtores, or other ammunition of war, or any place or places

"where

"where an such ſtores or ammunition ſhall be kept or
"poſited, ſhall ſuffer death without clergy."

Sect. 20. And it is alſo enacted by 22 Geo. 2. c. 3
24. "That every perſon in the fleet who ſhall waſte,
"bezil, or not carefully preſerve any powder, ſhot, amm
"on or other ſtores and proviſions, their abettors, buyer
"receivers, (being perſons ſubject to naval diſcipline),
"ſuffer ſuch puniſhment as by a court martial ſhall be
"juſt in that behalf."—And by ſ. 25 "Every perſon in
"fleet who ſhall unlawfully burn or ſet fire to any maga
"or ſtore of powder, or ſhip, boat, ketch, hoy or v
"or tackle, or furniture thereunto belonging, not then a
"taining to an enemy, pirate or rebel, on conviction by
"martial, ſhall ſuffer death."

Sect. 21. As to the fifth offence of this kind, *viz.* T
relieving a popiſh prieſt, it is enacted by 27 Eliz. c. 2.
"That whoever ſhall wittingly and willingly receive, re
"comfort, aid or maintain any Jeſuit, ſeminary or other p
"prieſt, &c. being at liberty or out of hold, knowing hi
"be ſuch a Jeſuit, &c. ſhall for ſuch offence be adjud
"felon without benefit of clergy."

CHAPTER THE NINETEEN

OF PRÆMUNIRE.

For the hiſtory of Præmunire, ſee 4 Comm. c. 8.

OFFENCES more immediately againſt the king, capital, come generally under the titles of *præm* miſpriſion, and contempts. In treating of *præmunire* I conſider,—Firſt, What offences come under this noti Secondly, How they are puniſhed.

And firſt, Offences coming under the notion of *præm* ſeem to be reducible to the following general heads; Offences againſt the prerogative of the crown. Secondly, fences againſt the authority of the king and parliament.

Thoſe of the firſt kind ſeem to come under the follo particulars; 1. Making uſe of papal bulls. 2. Dero from the king's common law courts. 3. Appealing to from any of the king's courts. 4. Exerciſing the juriſdi of a ſuffragan without the appointment of the biſhop o dioceſe. 5. Refuſing to elect or conſecrate the perſon minated by the king to a biſhoprick. 6. Maintaining pope's power. 7. Bringing in *Agnus Dei*. 8. Contrib to the maintenance of a popiſh ſeminary. 9. Refuſing oaths.

ct. 1. But inaſmuch as theſe offences depend chiefly
ſtatutes made for the preſervation of the ſovereignty of
crown from the incroachments of the ſee of Rome, I
, in order to ſhew the reaſonableneſs of theſe laws, take
ort view of thoſe uſurpations, which made them neceſſary.

ct. 2. It is the general opinion, that Chriſtianity was firſt
ted in this iſland by ſome of the eaſtern church, which is
probable, from the antient Britons obſerving Eaſter always
he fourteenth day of the month, according to the cuſtom
e eaſt. Dav. 83. 88. Seld. Jan. Ang. 27. 4 Comm. c. 8.

ct. 3. But the Saxons being converted about the year
by perſons ſent from Rome, and wholly devoted to the
reſt thereof, it cannot be expected that ſuch an oppor-
y of enlarging the juriſdiction of that ſee ſhould wholly
eglected. Parſons, c. 6. p. 12. to 25. 57 to 60. Barrow 258. to 262.

ct. 4. And yet Parſons, in his attempt to anſwer Sir
ard Coke's fifth report concerning the king's eccleſiaſtical
ority, is ſcarce able to produce any inſtances of the papal
er in this kingdom before the Norman Conqueſt. Indeed
ells us, that four or five perſons were made biſhops by the
at the firſt converſion, but offers not any example thereof
ween the year 669 and the conqueſt; and it is certain, that
biſhopricks were then conferred by the king's delivery of a
and a paſtoral ſtaff. 1 R. Abr. 882. 1 Inſt. 134. 344. Seld. Ja. Ang. 42, 65.

ct. 5. Neither is he able to produce any inſtance, that
s like an appeal to Rome before the conqueſt, except in
caſe of two biſhops, and he is forced to own, that even
of the biſhops was depoſed by two kings, and could get
relief againſt either of them, notwithſtanding the pope's
oſt application in his favour. Parſ. c. 6. p. 29, to 32. 50. to 56. Barrow 242. to 258. Seld. Ja. Ang. 59. 67, 68.

ct. 6. Nor can he ſhew more than four or five inſtances
exemptions from ordinary juriſdiction, granted or con-
ed by popes to religious houſes in thoſe days, which
nly ſhews that this concurrence was not thought neceſ-
; and it appears, that our ancient kings, of their own
ority, exempted ſome abbeys from epiſcopal juriſdiction;
it hath always been a received rule, even in the times of
ry, that the chancellor ſhall viſit a church of the king's
dation, notwithſtanding it be not ſpecially exempted. Parſ. c. 6. p. 37 to 48. 1 H. 7. 25. 21 Ed. 3. 60. 1 Inſt. 144. F. N. B. 42. 27 Ed. 3. 83. 6 H. 7. 14. 2 R. Abr. 230. 231.

ct. 7. But the pope, having favoured and ſupported
liam the Firſt in his invaſion of the kingdom, took that
rtunity of enlarging his incroachments, and in this
's reign began to ſend his legates hither; and prevailed
rſt with Henry the Firſt, and afterwards with king John,
give up the donation of biſhopricks; and, in the time of
Stephen gained the prerogative of appeals, and in the
e of Henry the Second, exempted all clerks from the ſecular
wer. Davis 89. Davis 90, 93. 2 Roll. 103. Palm. 25, 26. Seld. Ja. Angl. 67.

ct. 8. Indeed this king did at firſt ſtrenuouſly withſtand
e innovations, and aboliſhed moſt of them by the conſti-
tutions Seld. Epinomis, c. 8. Davis 91.

tutions of Clarendon: but upon the death of Becket, who, having violently oppoſed the king, was ſlain by ſome of ſervants, the pope got ſuch an advantage over the king, that was never after able effectually to execute thoſe laws.

Sect. 9. And not long after this, by a general excommu cation of the king and people, for ſeveral years, becauſe th would not ſuffer an archbiſhop to be impoſed upon them, t John was reduced to ſuch ſtraits, that he was obliged to ſ render his kingdoms to the pope, and to receive them again, hold of him for the rent of a thouſand marks.

2 Inſt. 584. Davis 95.

Sect. 10. And in the following reign of Henry the Thi partly from the profits of our beſt church benefices, wh were generally given to Italians, and others reſiding at t court of Rome, and partly from the taxes impoſed by t pope, there went yearly out of the kingdom ſeventy thouſa pounds ſterling.

2 Inſt. 580.

Sect. 11. The nation being under this neceſſity was obli to provide for the pererogative of the prince and the liber of the people, by many ſtrict laws. And in the reign of E ward the Firſt, religious houſes were prohibited under h penalties, to ſend any thing to their ſuperiors beyond ſeas; it was declared by parliament, that the pope's taking upon h to diſpoſe of Engliſh benefices to aliens was an incroachment to be endured; and ſoon after theſe grievances produced th more ſevere laws againſt the above mentioned offences of t nature, the particulars whereof are before ſet forth.

Stat 6th. Reg. 64. 3 Inſt. 127. 27 Ed. 3. ſ. 1. c. 1. 38 Ed. 3. ſ. 1. c. 4. Stat. 2. c. 1. 2, 3, 4. Seld. in Flet. 10. 4. 3 Rich. 2. c. 3. 7 Rich. 2. c. 12. 12 Rich. 2. c. 15.

Sect. 12. And firſt the offence of making uſe of pa bulls is made a *præmunire* by many accident as well as la ſtatutes; for it is enacted by 25 Edw. 3. called the ſtatute proviſors. "That whoever ſhall, by a Papal proviſion, d "turb any patron to preſent to a benefice, &c. ſhall be fi "and impriſoned till he makes full renunciation, &c." A it is further enacted by 25 Edw. 3 ſt. 5. c. 22. "That "any one purchaſe a proviſion of an abbey or priory, "ſhall be out of the king's protection." And by 38 Ed 3. & 12 Rich. 2. c. 15 & 13 Rich. 2. ſt. 2. c. 2. "T "whoever ſhall accept a benefice contrary to 25 Edw. "ſhall be baniſhed." And by 13 Rich 2. ſt. 2. c. 3. "T "whoever ſhall bring a ſentence of excommunication ag "any perſon, for executing the ſaid ſtatute of 25 Edw. 3. "ſuffer pain of life and member." And by 16 Rich. 2. c. "That whoever ſhall purchaſe or purſue, or cauſe to be p "chaſed or purſued, in the court of Rome or elſewhere, "tranſlations, proceſſes, ſentences of excommunication, bu "inſtruments, or other things, contrary to the tenor of t "ſtatute, which touch the king, againſt him, his cro "his regality, or his realm, or bring them within this rea "or receive them, &c. ſhall be out of the king's protect "and their lands and tenements, goods and chattels forfe

the king; and they ſhall be attached by their bodies, &c." by 2 Hen. 4. c. 3. "That whoever ſhall purchaſe from me a proviſion of exemption from ordinary obedience," and Hen. 4. c. 4. "That whoever ſhall put in execution bulls rchaſed by thoſe of the order of Ciſteaux to be diſcharged tithes, ſhall incur the like penalty." Alſo offenders of this e are farther reſtrained by 6 Hen. 4. c. 1. 7 Hen. 4. c. 8. n. 4. c. 8. & 3 Hen. 5. c. 4. By which the ſtatutes above ioned are enforced and explained. And it is farther enacted 3 Hen. 8. c. 21. ſ. 22. "That whoever ſhall ſue for or ecute any licence, diſpenſation, or faculty, from the ſee of me;" and by 28 Hen. 8. c. 16. (by which all bulls, briefs, . heretofore obtained from Rome, are made void.) That hoever ſhall uſe, alledge, or plead the ſame in any court, leſs they were confirmed by that ſtatute, or afterwards by e king, ſhall incur the like penalty." Yet it hath been en, That the alledging of an ancient bull in order to induce er principal matter, whereon to ground a title without ing any thing from the bull itſelf, is not within this ſtatute. 2 Lev. 251.

. 13. By 13 Eliz. c. 2. Thoſe who purchaſe any bull, 1 Hale 643.
rom Rome, are guilty of high treaſon. But thoſe ancient *Vide ſup.* c. 17.
es ſtill continue in force; and it is in the election of the Davis 84.
n to proceed either upon them, or 13 Eliz. Alſo by the ſtatute of 13 Eliz. "The aiders, comforters, and main-iners of ſuch offenders after the offence, to the intent to hold the ſaid uſurped power, incur a *præmunire*."

. 14. The ſecond offence of this nature, *viz.* That of gating from the king's common law courts, is ſaid to have 2 R. Ab. 176.
a high offence at common law, and is made a *præmunire* by Raſt. 466.
ancient ſtatutes; for by 27 Edw. 3. c. 1. & 38. Edw. 3. B. 2. c. 48. ſ. 9.
roviſors, "If any ſubject draw any out of the realm in plea, 3 Inſt. 125.
hereof the cognizance pertains to king's court, or of things B. Premu. 3.
hereof judgments be given in the king's court, or ſue in any her court, to defeat or impeach the judgments given in the ng's court, he ſhall be warned to appear, &c. in proper per-n, at a day containing the ſpace of two months; at which, he appear not, he and his proctors, &c. ſhall be put out of e king's protection, his lands and chattels forfeited, his body priſoned and ranſomed at the king's will, &c."

. 15. And by 16 Rich. 2. c. 5. "Both thoſe who ſhall rſue or cauſe to be purſued in the court of Rome or elſe-here any proceſſes or inſtruments, or other things whatſoever hich touch the king, againſt him, his crown, and regality, his realm, and alſo thoſe who ſhall bring, receive, notify, execute them, and their abettors, &c. ſhall be put out of e king's protection, &c."

Sect.

2 Bulſt. 299. 3 Inſt. 125. C. Jac. 336.

Sect. 16. In the conſtruction of theſe ſtatutes it was hol That certain commiſſioners of ſewers for ſummoning one be them who had got a judgment at law, and impriſoning him t would releaſe it, were guilty of a *præmunire*.

3 Inſt. 123. 4 H. 4. c. 23. 2 Cha. Caſ. 97. D. 201, 301. 1 Lev. 241. Hard. 125. 1 D. Abr. 764. 1 Sid. 463. 1 Mod. 59. 3 Keb. 221.

Sect. 17. Alſo there have been formerly many ſtrong opini That ſuits in equity to relieve againſt a judgment at law, within theſe ſtatutes; eſpecially if the end thereof be to co vert the very point determined at law, or to ſeek relief judgment in a caſe wherein the law may relieve, as againſt ceſſiveneſs of damages, &c. But it ſeems to be generally ag at this day, That no ſuch ſuit is within the intention of the ſtatutes.

2 Bulſ. 299. 1 Roll. 190. (c) 3 Inſt. 120. 121, 122. B. Præmun. 5, 12. 16. 31. 15 H. 7. 9. 12 Co. 37. 2 R. Abr. 177. Moor 838. C. Jac. 134.

Sect. 18. It hath been ſaid, That ſuits in the admiralty eccleſiaſtical courts within the realm are within 16 Rich. 2. c. (by force of thoſe words, *or elſewhere*,) if they concern mat the cognizance whereof belongs to the common law; as whe biſhop deprives an incumbent of a donative, or excommuni a man for hunting in his parks, &c. or where (*c*) commiſſio of ſewers impriſon a man for not releaſing a judgment at law.

Sect. 19. But it ſeemeth, That a ſuit in thoſe courts matter which appears not by the libel itſelf, but only by the fendant's plea, or other matter ſubſequent, to be of temporal nizance, (as where a plaintiff libels for tithes, and the defen pleads that they were ſevered from the nine parts, by which became a lay-fee,) is not within the ſtatute, becauſe it app not that either the plaintiff or the judge knew that they ſevered.

Sect. 20. The third offence of this nature, *viz.* That of pealing to Rome from any of the king's courts, is made a *præm* by 24 Hen. 8. c. 12. and c. 20. 21. and 25 Hen. 8. c. 19 which it is enacted "That all ſuch appeals as formerly " made to Rome, ſhall from henceforth be made to the " court of chancery."

Sect. 21. The fourth offence of this nature, *viz.* Tha exerciſing the juriſdiction of a ſuffragan, without the appo ment of the biſhop of the dioceſe, is made a *præmunire* by Hen. 8. c. 14. which ſets forth at large for what towns ſuch fragans may be nominated by the king, and alſo how they be nominated, conſecrated, and commiſſioned.

Sect. 22. The fifth offence of this nature, *viz.* That of ſuſing to elect or conſecrate the perſon nominated by the kin a biſhoprick, is made a *præmunire* by 25 Hen. 8. c. 20. ſ. 7. which it is enacted, "That if any dean and chapter refuſe " elect the perſon named in the king's letter for a biſhopr " and to ſignify ſuch election to the king within twenty days " the licence ſhall come to their hands, or if any archbi " or biſhop after ſuch election (or nomination by the kin

default thereof ſignified unto them by the king,) ſhall refuſe within twenty days to confirm and conſecrate the perſon ſo ſignified to them, they incur a *præmunire*."

Sect. 23. The ſixth offence of this nature, *viz.* That of maintaining the pope's power, is made a *præmunire* upon the firſt conviction, and high treaſon upon the ſecond. 5 Eliz. c. 1.

Sect. 24. The ſeventh offence of this nature, *viz.* That of bringing in *Agnus Dei*, is made a *præmunire* by 13 Eliz. c. 2. ſ. 8. by which it is enacted. "That if any one ſhall bring into the realm, &c. any *Agnus Dei*, *croſſes*, pictures, beads, or ſuch like ſuperſtitious things, pretended to be hallowed by the biſhop of Rome, &c. and ſhall deliver or offer the ſame to any ſubject to be worn or uſed in any wiſe; or if any one ſhall receive the ſame to ſuch intent, and not clear himſelf by diſcovering the offender, &c. he ſhall incur a *præmunire*." Cawley 52, 53. Vide 3 Jac. c. 5. ſ. 25. as to the penalty of importing, popiſh books. Ante, Ch. 15. ſ. 15.

Sect. 25. And ſo ſhall a juſtice of peace in the ſame county, who having any offence in that act declared unto him, ſhall not declare it to a privy counſellor, within ſixteen days. Cawley 54.

Sect. 26. The eighth offence of this nature, *viz.* That of contributing to the maintenance of a popiſh ſeminary, is made a *præmunire* by 27 Eliz. c. 2. ſ. 6.

Sect. 27. The ninth offence of this nature, *viz.* That of refuſing the oaths, is made a *præmunire* by ſeveral ſtatutes; for by 1 Eliz. c. 1. ſ. 19. it is enacted, "That all eccleſiaſtical perſons, and all eccleſiaſtical and temporal officers, and all perſons having the king's fees or wages; and by ſ. 26. That all perſons taking orders, or any degree in any univerſity within the realm, ſhall take the oath of ſupremacy, under pain of loſing their benefices and offices." *N. B.* The 1 Eliz. c. 1. as far as concerns the oaths is repealed by 1 W. & M. c. 8. ſ. 2.

And it is further enacted by 5 Eliz. c. 1. ſ. 5. "That all the perſons above mentioned who are required by the ſaid ſtatute of 1 Eliz. c. 1. to take the ſaid oath, and all ſchool-maſters, publick and private, barriſters, benchers, readers, ancients in any houſe of court, &c. attornies, ſheriffs, and officers belonging to the common or any other law, or to the crown, or to any court whatſoever, ſhall take the ſaid oath in open court, before they ſhall be admitted to any ſuch vocation or office, &c. And if they belong not to any court, that then they ſhall take the ſame before ſuch perſon as ſhall admit them to ſuch vocation, &c. or before commiſſioners appointed under the great ſeal, &c."

And it is farther enacted ſ. 6. "That any biſhop may tender the ſaid oath to any ſpiritual perſon within his dioceſe,

"as well in places exempt as others;" and by ſ. 7. "That co
"miſſioners may be appointed by the Lord Chancellor to tend
"the ſame to ſuch perſons as by their commiſſion they ſhall
"authorized to tender it unto."

And by ſ. 8. "That if any perſon, compellable by eith
"of the ſaid acts, or appointed by ſuch commiſſioners to take
"ſaid oath, ſhall refuſe to take it on a tender thereof, he ſh
"incur a *præmunire*."

And by ſ. 9. "That ſuch refuſal ſhall be certified with
"forty days before the king in his court of King's Bench,
"thoſe who have authority to tender the ſaid oath, under
"penalty of one hundred pounds; and that the ſheriff of
"county wherein the ſaid court ſhall ſit, may impanel a jur
"who ſhall inquire of ſuch refuſal, in ſuch manner as if it h
"happened in the ſame county."

Raym. 212. 1 Ven. 171. 2 Keb. 825.

Sect. 28. In the conſtruction of theſe ſtatutes it hath been r
ſolved: Firſt, That the obligation to take the ſaid oath continu
after the death of queen Elizabeth, tho' the ſtatutes ſay nothi
of her ſucceſſors; and the like reſolution alſo has been made
relation to the oaths appointed by ſubſequent ſtatutes.

Raym. 445.

Sect. 29. Secondly, That in a commiſſion authoriſing perſo
to tender the ſaid oath, a general deſcription of the perſons
whom it ſhall be tendered is ſufficient, without naming them pa
ticularly by their names.

Dyer 234.

Sect. 30. Thirdly, That if the perſon who tendered the oa
as biſhop, was not a biſhop at that time, the defendant may gi
it in evidence upon the general iſſue.

1 Bulſt. 197, 198. 2 Bulſt. 290. 1 Ven. 172, 173.

Sect. 31. Fourthly, That the ſaid oath muſt in ſubſtance b
taken in the very words expreſſed in the acts, and cannot be qu
lified with any reſerve whatever: yet it hath been reſolved, Th
to uſe the words, *In conſcience*, inſtead of, *in my conſcience*,
ſea of Rome, inſtead of *ſee* of Rome, makes no material varianc

Raym. 445.

Sect. 32. Fifthly, That a certificate of a refuſal of the ſa
oath made to the judges of the ſaid court of the King's Bench
by name, and not to the king in his ſaid court, is ſufficient with
the meaning of the ſtatute.

Dyer. 234. 363.

Sect. 33. Sixthly, That an eccleſiaſtical perſon is well de
ſcribed in ſuch a certificate by the addition of *legum doctor*,
ſacris ordinibus conſtitutus, without adding *clericus*, &c.

Dyer 234.

Sect. 34. Seventhly, That ſuch a certificate being entered
record, as brought into court ſuch a day and year *per* A. B. C
cellar, of ſuch a biſhop, is good, without entering that it was
brought *per mandatum epiſcopi*.

Dyer 234.

Sect. 35. Eighthly, That the trial muſt be by a jury of th
county, wherein the oaths were refuſed; for the ſtatute onl
authoriſes an indictment by a jury of the county, wherein th
court ſits.

Sect

Sect. 36. Ninthly, That any miſ-recital of the very words the oath, in an indictment for not taking it is erroneous. See the books above cited.

Sect. 37. By 3 Jac. 1. c. 4. ſ. 13, 14. "Any biſhop, or two juſtices of peace, whereof one is to be of the quorum, might render the oath of obedience therein preſcribed, to any perſon above the age of eighteen years, being under the degree of nobility, and convicted or indicted of recuſancy, or not having received the ſacrament twice in the year paſt, and alſo to any ſuſpected ſtranger who ſhall not purge himſelf upon oath; and ſhall certify the names of ſuch as take the ſaid oath to the next Quarter-Seſſions, and commit thoſe who refuſe it till the next Aſſizes or Seſſions, where the ſame ſhall be again tendered; and if the ſaid perſons, or any other perſons whatſoever of the age of eighteen years, other than noblemen or noblewomen. ſhall there refuſe to take it, they incur a *præmunire*, unleſs they be femes covert, who ſhall be committed till they take it." The 3 Jac. 1. c. 4. as far as concerns the oaths, is repealed by 1 W. & M. c. 8. ſ. 2. Skin. 11.

Sect. 38. By ſ. 41. "The lords of the council in like manner may tender the ſaid oath to any nobleman or woman, of the age of eighteen years, who refuſing the ſame, incur a *præmunire*, femes covert excepted."

Sect. 39. By 7 Jac. 1. c. 6. ſ. 2. 26, 27. "All perſons whatſoever, as well eccleſiaſtical as temporal, of what eſtate, dignity, pre-eminence, ſex, quality or degree ſoever, he or ſhe ſhall be, above the age of eighteen years, being in that act mentioned and intended, ſhall take the ſaid oath; and any privy counſellor or biſhop, within his dioceſe, may require any baron or baroneſs, of the age of eighteen years, and any two juſtices of the peace, whereof one to be of the quorum, may require any other perſon of that age to take it.—And if any perſon of or above the ſaid age and degree ſhall be preſented, &c. for not coming to church, &c. then three of the privy council, whereof the Lord Chancellor, &c. to be one, ſhall require ſuch perſon to take the ſaid oath.—And if any perſon whatſoever, of the ſaid age and under the ſaid degree, ſhall be preſented, &c. for not coming to church, &c. or if the miniſter, &c. ſhall complain to any juſtice of peace, &c. and the juſtice ſhall find cauſe of ſuſpicion, then any one juſtice of peace ſhall require ſuch perſon to take the ſaid oath, &c. And all ſuch perſons refuſing a tender of the ſaid oath, ſhall be bound over to the Aſſizes or Seſſions, where, if they refuſe again, they incur a *præmunire*:" And ſ. 27. "All ſuch refuſers are diſabled to execute any publick place of judicature, or bear any other office, (being no office of inheritance or miniſterial function) or to practiſe the common or civil law, phyſick or ſurgery, or the art of an apothecary." Vide 16 Geo. 2. c. 30. See Cawley 246, &c.

12 Co. 130, 131. *Sect.* 40. In the conſtruction of theſe ſtatutes it hath been re-
ſolved, That the juſtices of peace, &c. may ſend their warra
to bring ſuch perſons before them, but that they cannot authori
the conſtable to break open the doors to take them.

Sect. 41. But by 1 William & Mary c. 8. the oaths of ſupre
macy and obedience, preſcribed by theſe acts, were abrogated
and the following oath and declaration ſubſtituted in their roo
Vide 1 Geo. 1. c. 13. —"I *A. B.* do ſincerely promiſe and ſwear, That I will be faith-
" ful and bear true allegiance to his majeſty king George."—
6 Geo. 3. c. 53. "I *A. B.* do ſwear, That I do from my heart abhor, deteſt an
" abjure, as impious and heretical, that damnable doctrine an
" poſition, that princes excommunicated or deprived by the pop
" or any authority of the ſee of Rome may be depoſed or mur
" dered by their ſubjects or any other whatſoever." "And I d
" declare, that no foreign prince, perſon, prelate, ſtate, o
" potentate, hath or ought to have any juriſdiction, power, ſu
" periority. pre-eminence or authority eccleſiaſtical or civil wit
" in this realm."

Vide ch. 24. *Sect.* 42. And by ſ. 3, 4, 5. "All perſons who are require
to take, or authoriſed to tender the ſaid abrogated oaths, o
either of them, are in like manner required and authoriſed t
take and tender the ſaid oath and declaration, under the ſame pe
nalties, &c."

Vide ch. 24. ſ. 7. *Sect.* 43. By 7 Will. 3. c. 24. "Serjeants at law, coun
1 Comm. 368. "ſellors, attornies, ſolicitors, proctors, clerks or notaries, prac
4 Comm. 115. 116, 123. "tiſing as ſuch in any court whatſoever, without taking the ſai
" oaths and ſubſcribing the ſaid declaration, incur a *præmunire*.

Sect. 44. And now I am in the ſecond place to conſider thoſ
offences againſt the authority of king and parliament, which com
under the notion of *præmunire*; as to which it is enacted by
Ann. c. 7, "That if any perſon ſhall maliciouſly and directly
" by preaching, teaching, or adviſed ſpeaking, declare, main
" tain and affirm, that the pretended prince of Wales, hath an
" right or title to the crown of theſe realms, or that any othe
" perſon or perſons hath or have any right or title to the ſame
" otherwiſe than according to 1 Will. & Mar. c. 2. and 12 Will
" 3. c. 2. and the acts then lately made in England and Scotland
" mutually for the union of the two kingdoms; or that the king
" or queens of this realm, with the authority of parliament, ar
" not able to make laws to limit the crown and the deſcent, &c
" thereof, ſhall incur a *præmunire*.

4 Comm. 117. 1 Bulſt. 199. Co. Lit. 129. 3 Inſt. 125. 218. B. 2. p. 444. *Sect.* 45. As to the ſecond general point of this chapter
viz. In what manner offences of this nature are puniſhed.
is to be obſerved, That moſt of the ſtatutes of *præmunire* refe
the puniſhment to 16 Rich. 2. c. 5. which enacts, that thoſe
wh

o offend againſt the purport thereof "ſhall be put out of he king's protection, and their lands and tenements, goods nd chattels forfeited to our lord the king: and that they be ttached by their bodies, if they may be found, and brought efore the king and his council, there to anſwer to the caſes foreſaid, or that proceſs be made againſt them by *præmunire facias*, in manner as is ordained in other ſtatutes of proviſors."

Sect. 46. Inaſmuch as this ſtatute expreſsly ſaith, that ſuch enders ſhall be put out of the king's protection, and alſo ſtatute of 25 Edw. 3. ſ. 5. c. 22. had farther added, That any one might do with a purchaſer of the proviſions, herein prohibited, as with the king's enemy, and that he who ſhould offend againſt ſuch a one in body, lands, or goods, ſhould be excuſed," it was formerly holden, That a ſon attainted in a *præmunire* might lawfully be ſlain by any , as being the king's enemy, and out of the protection of laws; but the latter opinions ſeem to have diſapproved of ſeverity. However, it is expreſsly enacted by 5 Eliz. 1 ſ. 21, 22. "That it ſhall not be lawful to kill any perſon attainted in *præmunire*, ſaving ſuch pains of death or ther hurt or puniſhment, as heretofore might, without anger of law, be done upon any perſon that ſhall ſend r bring into the realm, or within the ſame ſhall execute, ny proceſs, &c. from the ſee of Rome."

Co. Lit. 130. 12 Co. 68. 3 Inſt. 128. B. Cor. 197. Jenk. 199.

Sect. 47. But howſoever the law may ſtand in relation to h perſons as are within the exception of this act, it is cer- that no perſon whatſoever attainted of any *præmunire* can ng an action for any injury whatſoever; and that no one wing him to be guilty can with ſafety give him aid, com- or relief.

1 Inſt. 130. 1 Eliz. 1. c. 39. Poſt. 126. Staunf. 44. Plow. 97. 4 Comm. 118. 3 Jac. 333.

Sect. 48. But it hath been reſolved, That thoſe general rds in the ſtatute 16 Rich. 2. c. 5. That all the lands and ements ſhall be forfeited, extend not to land entailed, after death of the offender.

1 Inſt. 130. 3 Inſt. 126. 2 Lev. 169. B. 2. c. 49. ſ. 28. C. Car. 172. Jones. 217. 1. Ven. 173.

Sect. 49. Alſo it hath been reſolved, That a ſtatute, by ointing that an offender ſhall incur the penalty and dan- mentioned in the 16 Rich. 2. c. 5. does not confine the

For the judgment in *Præmunire*, ſee b. 2. c. 48. ſ. 9. to. 273

THE following offences alſo have been made ſubject to the penalties of a *præmunire*.

To moleſt the poſſeſſors of abbey lands, granted by parliament to Henry the th and Edward the Sixth, 1 & 2. Ph. & Ma, c. 8. ſ. 40.

To take more than the rate of 10l. for the loan of 100l. for a year, againſt the inctions of 5 Ed. 6. c. 20. 13 Eliz. c. 8. Noy. 2. Het. 25. Cro. Jac. 253.

To procure any action to be delayed, after notice, otherwiſe than by the regula- ſes of the court. 21 Jac. 1. c. 3. ſ. 4.

To obſtruct the proceſs of making gunpowder, or to prevent the importation of ingredients of which it is made, by virtue of a pretended authority from the crown. Car. I. c. 21. 1 Jac. 2. c. 8.

To ſeize the property of another under colour of purveyance, of impreſs any car- e by way of pre-emption. 12 Car. 2. c. 24.

6. To

the profecution for the offence to the particular proceſs th by given.

6. To aſſert that both or either houſe of parliament have legiſlative authority wi the king. 13 Car. 2. c. 1.

7. To ſend any ſubject of this realm a priſoner beyond the ſeas in defiance o *habeas corpus* act. 31 Car. 2. ſt. 2.

8. To conſpire to avoid the ſeizure or forfeiture upon the importation of cat mentioned in the act. 20 Car. 2. c. 7.

9. To treat of any other matter, at the convention for the election of the ſixteen p of Scotland, ſave the buſineſs of the election. 6 Anne c. 23.

10. To project any ſcheme by public ſubſcription to the prejudice of great num in their trade, and ſimilar to the South-Sea project. 6 Geo. 1. ch. 18. See Str. L. Ray. 1361.

11. To ſolemnize, aſſiſt, or be preſent at the forbidden marriage of ſuch of the cendants of George the Second, as are prevented by the act, from marrying withou conſent of the crown. 12 Geo. 3. c. 11.

CHAPTER THE TWENTIETH

OF MISPRISION OF TREASON.

2 R. 3. 10.
S. P. C. 37.
B. Cor 174.
Treaſ. 25, 31.
Skin. 636.
1 Hale 374, 708.
3 Inſt. 36.
4 Comm. 119.

THE word miſpriſion has not any certain ſignifica but is generally applied to all ſuch high offences as under the degree of capital, and nearly bordering thereup and it is ſaid that a miſpriſion is contained in every treaſo felony whatſoever, and that one who is guilty of felony or tr ſon may be proceeded againſt for a miſpriſion only, if the k pleaſe.

Hudſon of the court of Star Chamber M S S. in Muſ. Brit.

Offences of this kind are generally ſaid to be twofo Firſt, Negative, which conſiſt in the omiſſion of ſometh which ought to be done.—Secondly, Poſitive, which co in ſome miſdemeanor actually committed.

Sect. 2. The negative miſpriſion more immediately agai the king is commonly called miſpriſion of treaſon, which an offence conſiſting in the bare knowledge and conceal of high treaſon, (whether it be ſuch by 25 Edw. 3. or ſub quent ſtatutes) without any degree of aſſent thereto; this is declared to be a miſpriſion only by 1 & 2 Mar. c. 10. at law, any delay in diſcovering high treaſon, whatever ex ſes the party might have for it, was deemed an aſſent to and conſequently high treaſon.

Hale 48. 371.
Sum. 127.
Bract. 118.
S. P. C. 37.
3 Inſt. 36.

Sect. 3. And at this day, if the concealment of hi treaſon be accompanied with any circumſtances which ſh an approbation thereof, it amounts to high treaſon; as if having notice before-hand that perſons deſigned to meet order to conſpire againſt the government, go into their co pany and hear their treaſonable conſultation and conc it; or if one, who has been once accidentally in ſuch co

Sum. 127.
Kely 17, 21.
4 Comm. 120.

y and heard ſuch diſcourſe, meet the ſame company a nd time, and hear ſuch like diſcourſe, and conceal it.

Sect. 4. Alſo whoever receives and comforts a traitor, owing him to be ſuch, whether by counterfeiting of coin, (a) otherwiſe, is himſelf a principal traitor; for ſuch a receipt a felon makes the receiver an acceſſary to the felony, and atever makes an acceſſary in felony, makes a principal in aſon.

3 H. 7. 10. Sum. 127. 3 Inſt. 138. 12 Co. 81, 82. Con. Dy. 296. Inf. B. 2. c. 29. (a) Qu.

Sect. 5. Neither can a perſon, who has knowledge of a aſon, ſecure himſelf by diſcovering that there will be a ng in general, without diſcloſing the very perſons intending riſe; nor even by diſcovering of theſe to a private perſon, o is no magiſtrate.

1 Hale 233, 237, 613. Kely. 22. Sum. 127. S. P. C. 37.

Sect. 6. But it ſeems that one who is only told in general t there will be a riſing, without knowing any of the per- s or particulars of the deſign, is not bound to make any ſcovery at all.

Kely. 22.

Sect. 7. There is one poſitive miſpriſion which is made ſpriſion of treaſon, by 13 Eliz. c. 2. by which it is enact- That thoſe who forge foreign coin, not current here, their lers, abettors and procurers are guilty of miſpriſion of aſon, &c.

1 Hale 376. 4 Comm. 121.

CHAPTER THE TWENTY FIRST.

F CONTEMPTS AGAINST THE KING's COURTS.

OTHER poſitive miſpriſions more immediately againſt the king ſeem reducible to the following heads.—Firſt, ntempts againſt his palace or courts of juſtice. Secondly, ntempts againſt his prerogative. Thirdly, Contempts againſt perſon or government. Fourthly, Contempts againſt his le.

Sect. 1. And firſt, Contempts againſt the king's palace, &c. ve always been looked upon as very high miſpriſions, and the ancient law before the conqueſt, Fighting in the king's lace was a capital offence; and by 33 Hen. 8. c. 12. ſ. 7. Malicious ſtriking in the king's palace, whereby any blood ſhall be ſhed, is puniſhable with the loſs of hand, perpetual impriſonment, and fine at the king's pleaſure."

3 Hen. 7. c. 14 9 Ann. c. 16. Steirn de jure Goth. l. 3. c. 3. L. L. Alured cap. 7 & 34. 3 Inſt. 140. Pop. 206.

Sect. 2. It ſeems queſtionable from the conſtruction of is whole act, and the general tenor of the law-books, whe- er ſtriking in a palace, wherein the king is not at the time

See firſt part of the act. S. P. C. 38. B. Pain 16. Dalt. c. 90.

6 Mod. 75, 76. 3 Inſt. 140. 4 Com. 125.

time actually reſident, (1) be within the ſtatute; and it is ſ that the inſtance which is given in the third Inſtitute, o perſon's hand being cut off for ſtriking in the tower, is warranted by the record.

(1) The 3 Jac. 2. The Earl of Devonſhire ſtruck Colonel Culpepper in the *room to the drawing room* at Whitehall; an information was exhibited in the King's Bench this miſdemeanor; and, the Earl alledged his priviledge, and refuſed to plead. On ment, the objection was over-ruled, and the Earl fined 30000l. and impriſonment paid. On error being brought, the houſe of Lords determined, 1. That it was a tempt of priviledge. 2. That the fine was exorbitant and repugnant to Magna Cha 3. That no peer ought to be impriſoned at any time for the non-payment of a fine to king. 11 State Trials. 133.

L. L. Ina. c. 6. L. L. Canuti. c. 56. L. L. Alured c. 7. 2 Inſt. 549. 3 Inſt. 140. S. P. C. 38. Dalt. c. 90. 41 Aſſ. 25. 22 E. 3. 18. Dyer 188. See B. 2. c. 48. f. 11. Daliſ. 23. 2 R. Abr. 76. Sum. 131. 1 Keb. 751. 12 Co. 71. (a) Owen. 120. C. Eliz. 405. 1 Lev. 106. 6 Mod. 172. Noy 104. C. Jac. 367. 22 E. 3. 13. 3 Inſt. 141. Con. Sum. 131. C. Eliz. 405. C. Car. 373. W. Jon. 345. Owen 120. 3 Inſt. 142. Moor 819.

Sect. 3. However it is certain, That by the common l which continues to this day, ſtriking in Weſtminſter Ha where the king is only preſent, as repreſented by his judg and by their adminiſtration diſtributing juſtice to his peop is more penal than any ſtriking in another place in his act preſence; for the latter is not puniſhed with the loſs of ha unleſs ſome blood be drawn, nor even then with the loſs lands or goods: but if a perſon draw his ſword on any judg in the preſence of the court of king's bench, chancery, comm pleas, or exchequer, or before the juſtices of aſſize, or oy and terminer, whether he ſtrike or not; or ſtrike a juror; any other perſon, with or without a weapon, he ſhall loſe h hand and his goods, and the profits of his lands during li and ſuffer perpetual impriſonment, (a) if the indictment lay t offence as done *coram domino rege.*

Sect. 4. Neither can one who is guilty of ſuch offenc excuſe the ſame by ſhewing that the perſon ſo ſtruck by hi gave the firſt aſſault.

Sect. 5. Alſo he who reſcues a priſoner from any of th courts above mentioned, without ſtriking a blow, ſhall forfe his goods and the profits of his lands, and ſuffer impriſonme during life, but not loſe his hand, becauſe he did n ſtrike.

Sect. 6. And he who makes an affray in the palace-ya near the ſaid courts, but out of their view, ſhall be impr ſoned during the king's pleaſure, and ſeverely fined, but n loſe his hand.

Sect. 7. And not only thoſe who are guilty of ſuch a actual violence, but alſo thoſe who diſturb ſuch courts b threatening or reproachful words to any judge ſitting i them, are guilty of a high miſpriſion; and in the time Edward the Firſt, one William de Bruce, who upon hearin judgment given againſt him in the exchequer, ſaid to th chief baron, "*Roger, Roger, Thou haſt had thy will of m* "*which of a long time thou haſt ſought, and I will remem* "*it,*" was for theſe words impriſoned during the king pleaſure, and ordered to walk from the king's bench t the exchequer, bareheaded and ungirt, and to aſk forgiv neſs, &c. And in the time of Charles the Firſt, one Ha riſo

for rushing into the court of common pleas, and saying to Hutton sitting there, "I do accuse Mr. justice Hutton of treason," was fined five thousand pounds, and imprisoned g the king's pleasure, and ordered to go to all the courts estminster Hall with a paper on his head, shewing his of- and to make his submission, &c. And these cases are ore remarkable, because in the first, the offender was of a honourable family; and in the second, a bachelor of divini- nd yet condemned to such corporal punishment, the lowest ich is in judgment of law higher than the greatest fine what- C. Car. 503, 504. Hutt. 131. Pop. 135.

8. Also all who reflect on the justice or honour of those courts seem to be indictable and highly finable; as if one ge an exemplification under the great seal to be contrary to riginal. Hob. 220. Moor 563. Pop. 135.

9. Also he who gives another the lie in Westminster sitting the courts, shall be bound to his good behaviour. 1 Lev. 107. 1 Keb. 558.

10. And, he, who makes an affray in the presence of of the king's inferior courts of justice, is highly finable, but unishable with loss of hand, &c. 3 Inst. 141. 12 Co. 71.

11. And he who speaks contemptuous and reproachful ls to the judge of such a court in execution of his office is ediately finable by such judge, (a) or, as some say, may b) indicted, &c. as if one give the lie to a judge of a court- n the face of the court, (c) or being (d) admonished by him ll of his hat, say, "I do not value what you can do," or im in the face of the court that he is (e) forsworn, or call (f) fool, &c. or say, "If I cannot have justice here, I ill have it elsewhere." (g) (a) C. Eliz. 78. 2 R. Abr. 78. (b) 1 Sid. 144. con. 2. R. Abr. 78. (c) Owen 113. Moor 470. C. Eliz. 581. (d) Raym. 68. 1 Keb. 451, 465. (e) 2 R. Abr. 78. (f) C. Eliz. 78. (g) 1 Sid. 144. 1 Keb. 508. 2 R. Abr. 78. 1 Roll. 245.

12. And it was formerly holden that a man might be ted for a slander of the justice of the nation by reflecting on tence given in any court ecclesiastical or temporal, whether tly, as where one said that such a sentence given by the commission court, was against law; or obliquely, as where aid that such a sentence was just, but that the testimonies hich it was founded were false, or the affidavits equivocat- Moor 247.

13. But it seems the better opinion of this day, That an cannot be indicted for any scandalous or contemptuous ds spoken of or to such officers, not being in the actual exe- on of their office; for such an offence seems rather to proceed ill breeding than a contempt of the government; and though ay be a cause to bind a man to his good behaviour, yet it not seem to be of such consequence as to be a sufficient ground publick prosecution, as for an offence against the common e, &c. Hob. 202. Moor 819. 1 Ven. 10.

And

And agreeable hereto it hath been reſolved, That a man
not be indicted for ſaying, "That whenever a burgeſs of
(i) 1 Mod. 35. "a town puts on his gown, Satan enters into him;"—(i)—
2 Keb. 594. That, "the mayor and aldermen of ſuch a town are as
(k) 5 Mod. 203. "villains as any that rob on the highway;" (k)—or,
"the juſtices of peace underſtand no more of the ſtatutes
"ciſe than this Jug, nor one of twenty of the parliament-
(l) 2 Keb. 494. "who made them," (l)—or, "That, ſuch a juſtice of
5 Mod. 204. "is a fool, an aſs, and a coxcomb, for making ſuch a war
2 Ven. 16. "and underſtands no more law than a ſlickhill," (m)—or,
(m) Q. v. Wrightſon, Salk. 698. "he is not fit to be a juſtice of peace; for that he will do
"or wrong, according as his affections lead him," (n)—
(n) Q. v. Soley, Salk. 698. That "ſuch an order is a numſcul order, and that the
"deſerves to be hanged who made it;" (o)—or That, "
(o) Q. v. Legaſley. "a juſtice of peace is a forſworn wretch, and that he will
(p) Q. v. Broxham. "his purſe at him;" (p)—or for ſaying to a mayor of a
(q) 6 Mod. 124. Salk. 697. "You Mr. Mayor, I do not care a fart for you; You Mr.
"or, are a rogue and a raſcal," (q)—or for ſaying,
(r) 1 Ven. 10. "The juſtices of peace have nothing to do with the exciſe."

Sect. 14. And not only thoſe who diſturb the adminiſtra
of juſtice by direct contempts offered to the king's courts,
alſo all ſuch as are guilty of any injurious treatment of
3 Inſt. 142. Sum. 131. Latch. 220. Barr. 112. perſons who are under the more immediate protection of
courts are highly puniſhable by fine and impriſonment; a
man aſſault or threaten his adverſary for ſuing him, or a
ſellor or attorney for being employed againſt him, or a juro
2 R. Abr. 76. giving a verdict againſt him, or a gaoler for keeping a pri
in ſafe cuſtody.

Sect. 15. Alſo all who endeavour to ſtifle the truth,
Hob. 271. prevent the due execution of juſtice, are highly puniſhable
thoſe who being examined before the privy council concer
their knowledge of a crime, whereof a third perſon is accu
Raym. 376. Tr. per Pa. 164. Sum. 131. 2 R. Abr. 177. S. P. C. 11. 36. 27 Aſſ. 63. B. Cor. 113. Sum. 131. 3 Inſt. 22. 106. 3 Leon. 207. diſcloſe what paſſed in ſuch examination, in order to ſuppr
farther diſcovery; and alſo all thoſe who diſſuade, or but en
vour to diſſuade a witneſs from giving evidence againſt a pe
indicted, &c. or who adviſe a priſoner to ſtand mute on hi
raignment, &c. And it was anciently holden, that if one o
grand inqueſt diſcover to any perſons indicted, the evidence a
them, he is an acceſſary to the offence, whether treaſon or
lony; and at this day it is agreed, that he is guilty of a high
priſion, puniſhable by fine and impriſonment.

CH

APTER THE TWENTY SECOND.

CONTEMPTS AGAINST THE KING'S PREROGATIVE.

ONTEMPTS againſt the King's prerogative are of ſo various a nature, that they cannot well be reduced to any in heads. However the principal of them ſeem to come r the following particulars: Firſt, Refuſing to aſſiſt the king e good of the publick. Secondly, Preferring the intereſts foreign prince to that of our own. Thirdly, Diſobeying ing's lawful commands or prohibitions. 4 Comm. 125. 126.

A. 2. Firſt therefore, it is a high offence for any ſubject ny the king that aſſiſtance for the good of the publick, ei- in his councils or wars, which by the law he is bound to give ; as for a peer not to (a) come to the parliament at the day mmons, or to (b) depart from thence without the king's ce, or for a (c) privy counſellor to refuſe to give his ad- on an affair of ſtate; or for any (*d*) private ſubject to refuſe rve the king in perſon, if he be able, or to find another, if he t able, in the defence of the realm, againſt rebels and fo- invaders; or, as ſome ſay, to refuſe to ſerve the king for in his wars abroad. (a) Moor 778. Noy 102. (b) S. P. C. 38. F. Cor. 161. (c) 2 R. Abr. 211. (d) 2 R. Abr. 165. B. Tenure 44, 73. 1 Ed. 3. c. 5. 18 Ed. 3. c. 7. 25 Ed. 3. c. 8. 4 H. 4. c. 13. 11 H. 7. c. 1.

C. Car. 11. 153. 257. Crom. Jur. 83. 84. 3 Inſt. 144. Hob. 235. 12 Co. 94. c. 18. ſ. 12.

A. 3. Secondly, It is ſo high an offence to prefer the in- of a foreign prince to that of our own, that it is criminal to y thing which may but incline a man ſo to do; as to re- a penſion from a foreign prince without the leave of our Vide ante. Ch. 18. ſ. 10.

A. 4. Thirdly, It is alſo a high crime to diſobey the s lawful commands or prohibitions; as by obſtinately refuſ- bedience to his writs; or contemning a ſummons from his cil to appear before them; or not anſwering ſuch queſtions lation to a matter wherein the intereſt of the ſtate is con- d, as ſhall be propoſed by the privy council; or refuſing ve evidence to a grand jury concerning a crime (for which he court may impoſe an immediate fine; or not returning beyond ſea upon the king's letters to that purpoſe; for h the offender's lands ſhall be ſeized till he return, (and he does return he ſhall be fined) or aſſembling at a turna- againſt the king's expreſs prohibition; or going beyond ſea ſt the king's will expreſsly ſignified, either by the writ, *ne exeat* (e) Salk. 278. Dyer 176. 128. Moor 109. 779. Lane 43. 3 Inſt. 179. Sav. 7, 8. 2 R. Abr. 208. F. N. B. 85. 1 Cha. Ca. 116. 3 Inſt. 178. 4 Comm. 122. 1 Comm. 266.

exeat regnum, (which may be directed as well to a layman to a clergyman, and on the ſuggeſtion of a private as well a a publick matter) or under the great or privy ſeal or ſigner by proclamation.

C. Eliz. 655. B. 2. c. 26. ſ. 2. *Sect.* 5. Alſo every contempt of a ſtatute is indictable, if other puniſhment be limited.

TO the foregoing contempts againſt the king's prerogative may be added negle join the *poſſe comitatus*, or power of the county, being thereunto required by the ſh or juſtices according to the ſtatute, 2 Hen. 5. c. 8. which is a duty incumbent upo that are fifteen years of age, under the degree of nobility, and able to travel. 4 Co 124. Lamb. Eir. 315.

CHAPTER THE TWENTY THIR

OF CONTEMPTS AGAINST THE KING PERSON OR GOVERNMEMT.

4 Comm. 123. ALL contempts againſt the king's perſon or government very highly criminal, and puniſhable with fine and imp ſonment, and ſometimes with the pillory, by the diſcre of the judges, upon conſideration of all the circumſtances of caſe. But inaſmuch as it is generally obvious to common ſe in what caſes and to what degree a man is guilty of this offe and it would be endleſs to enumerate all the particulars, I ſh content myſelf with glancing at ſome of the moſt general hea as,

C. Car. 168. 2 Keb. 336. *Sect.* 1. The charging the government with oppreſſion weak adminiſtration; as by ſaying, That "merchants "'ſcrewed up here in England more than in Turkey;" That "it is a good world when beggarly prieſts are made lor &c."

3 Mod. 52. 5 Mod. 363. *Sect.* 2. The doing an act which impliedly encourages reb lion; as by abſolving perſons at the gallows, who being co demned for high treaſon, ſhew no ſign of repentance, but pe in juſtifying the fact; or by drinking to the pious memory a perſon executed for high treaſon.

C. Jac. 37. Moor 756. Noy 101. *Sect.* 3. Endeavouring to frighten the king into a change his meaſures with threats of the uneaſineſs of his ſubjects; as ſubſcribing a petition to him, in which it is intimated, that it be denied, many thouſands will be diſcontented, &c.

C. Jac. 38. Vide the caſe of Alexander Scott for publiſhing falſe news. O. B. June Seſſions, 1778. No. 504. *Sect.* 4. Spreading falſe rumours concerning the king's i tentions; as that he deſigns to grant a toleration to papiſts,

Noy 105. *Sect.* 5. Charging him with a breach of his coronati oath.

Sect.

§. 6. Speaking contemptuouſly of him; as by curſing &c. or giving out that he wants wiſdom, valour or ſtea- s; or in general, doing any thing which may leſſen him in eem of his ſubjects, and weaken his government, or raiſe uſies between him and his people. C. Car. 117. &c.

§. 7. Alſo it ſaid to be an offence, for which a man be indicted, to refuſe in a foreign port to pay the uſual ms, becauſe it may cauſe a breach between our king and ing of the country. 1 Sid. 143. For other contempts againſt the King's Perſon and Government. Vide Skin. 633. 1 Black. 37.

CHAPTER THE TWENTY FOURTH.

CONTEMPTS AGAINST THE KING's TITLE.

CONTEMPTS againſt the king's title are of two kinds,—Firſt, Denying his title.—Secondly, Refuſing to the oaths required by law for the ſupport of his govern-

§. 1. The firſt offence of this kind, *viz.* That of de- the king's title, hath by ſome been carried ſo high as adjudged an overt act of compaſſing his death. How- it is certainly moſt highly criminal, and puniſhable with and impriſonment; and alſo ſuch infamous corporal hment, as to the diſcretion of the court ſhall ſeem pro- according to the heinouſneſs of the crime and the cir- ances of the parties. As if a man in writing or diſ- e ſhall maintain that the king is an uſurper; or that er hath a better title to the crown, *&c.* For ſuch like ations manifeſtly tend to raiſe tumults and diſorders in ate, and to alienate the affections of the people from rince, and incline them to favour the pretenſions of an- ; and it is highly preſumptuous for private perſons to meddle with matters of ſo high a nature; and it will be ible to preſerve the peace of a government, unleſs ſub- will quietly ſubmit themſelves to thoſe whom Providence placed over them, and prefer the publick good to their private inclinations and opinions. For otherwiſe, when- the title to the crown ſhall happen to be conteſted, it will poſſible to end the difference without perpetual civil and diſſenſions, and the prince who prevails will be ed to eſteem thoſe of the contrary party rather as ene- than ſubjects, if he finds them ready and deſirous to lay of all opportunities to diſturb his government, and ſhake eir forced obedience. And ſince there is no tribunal but Yelv. 107. 197. 2 Roll. 90. Palm. 424. 4 Comm. 123, 124.

but that of heaven, to which princes can appeal for t
ciſion of their titles, when that ſeems ſo far to have de
in favour of one as to give him quiet poſſeſſion of the t
the publick peace, which is the end of all governmen
quires a dutiful ſubmiſſion to him; and it is the h
madneſs to give up that eaſe and ſecurity which we ma
joy from a peaceful obedience, in exchange for that dif
uncertainty, and bloodſhed, which cannot but be em
from an attempt to wreſt the ſceptre out of the hands
prince; and it is the higheſt ingratitude to make no other
but diſloyalty and rebellion, for all the happineſs we can
under a juſt adminiſtration; and it is the greateſt of a
dities to think that the good of the community, for the
of which all government was inſtituted, ought not
preferred before the diſputed title of a particular perſ
family. All we can deſire from government, is the
enjoyment of what we may call our own, and whether
or that competitor to the crown be the inſtrument o
happineſs to us, ſeems little to concern us. Let the ti
one out of poſſeſſion of the throne be never ſo pla
it muſt have its original foundation from ſome poſitive
which, when it cannot take effect without involving a
in diſcord and confuſion, the avoiding whereof is the
end of all laws, it muſt give way to the publick neceſ
the ſtate; for there can be no human inſtitution whatſ
but muſt be limited by this implicit reſerve from th
principles of reaſon, that wherever the execution of it
be abſolutely inconſiſtent with the happineſs of the
for whoſe ſake it was ordained, it ought ſo far to b
pended.

Sect. 2. For this and many other ſuch like reaſon
law has always had a moſt tender regard for the ſecur
the prince in poſſeſſion of the crown, and as it has m
high treaſon to compaſs his death, &c. as appears
4 Comm. 123. chapter 17. ſection 11, &c. ſo hath it alſo made it
penal in any inferior degree to diſturb or diſquiet his g
ment.

As to the ſecond kind of offences of this nature, *viz.*
of refuſing to take the oaths required by law for the ſ
of the king's government; I ſhall conſider,—Firſt, The
of refuſing the oaths required for this purpoſe by the co
law—Secondly, The offence of refuſing the oaths requi
ſtatute.

Finch 241, 242. *Sect.* 3. As to the firſt particular, it ſeems to be
2 Inſt. 73. contempt at the common law to refuſe to take the
1 Hale 64. 71. allegiance to the king, which all laymen above the
2 Keb. 314. twelve years are bound to take at the torn or court-le
and ſurely nothing can be more unreaſonable than t

king, whose government we are happy under, all proper af- 1 Comm. 367.
ces of our fidelity to him; for how can we expect to enjoy 4 Comm. 270.
rivileges of subjects from one to whom we refuse to acknow- 423.
e ourselves subjects, or hope for protection from one, whom
rovoke to esteem us as his enemies, or blame that govern-
for treating us as malecontents, to which we give so just a
e to suspect our fidelity? If we consult the law of God, that
tell us, That "the powers that be are ordained of God."
will hear the voice of reason, that will convince us, that
only the peace and safety of the community, but also our
preservation, requires us to pay a dutiful obedience to those
govern us; and can we think it unlawful to engage ourselves
what it is our duty to do? If we consult the practice of
ations, that will shew us, that even conquest, which is the
est of all titles, has always been esteemed to give the con-
or such a right to the obedience of the conquered, that upon
aking them into his protection, they have in all ages been
to promise a reciprocal obedience. And if we will consult
own laws, we shall find them to direct us to pay our allegi-
to the king who governs us, as has been fully proved in the
ter of high treason.

to the second kind of offences of this nature, *viz.* That of
ing the oaths required *by statute* for the support of the go-
ment, I shall consider,—First, The offence of refusing the
of allegiance and supremacy.—Secondly the offence of re-
g the oath of abjuration.

. 4. As to the first of these offences, *viz.* That of refus- 1 Comm. 368.
e oaths of allegiance and supremacy, which since the refor- 2 Inst. 121.
on of religion have been thought necessary to be required 1 Hale. 64.
all persons, especially from those who are intrusted with 4 Comm. 115.
fice, in order to secure our princes from the intrigues of
, who have often taken upon them to dispense with oaths
egiance made to such princes whom they are pleased to call
icks, and to persuade the people that they may lawfully de-
those who have so far incurred the displeasure of the bishop
ome, as to be excommunicated by him, it having been
already in chapter 8. under what penalties officers are
to take the said oaths, and in chapter 19. sect. 27, &c.
ar all persons whatsoever are compellable to take them un-
ain of incurring a *præmunire*, I shall only take notice in this
of the method of proceeding on 1 Will. & Mar. c. 8. by
it is enacted, "That persons refusing the said oaths, being
dered to them by persons lawfully authorized to tender
same, shall be committed by the persons making such a
der for three months, unless they shall pay such sum,
exceeding 40*s.* as the persons, who shall make such
der, shall require of them, and if they refuse again at
the

" the end of the three months, that they ſhall be impriſoned
" months, or pay a ſum not above ten or under five pou
" and alſo find ſureties for their good behaviour and appear
" at the next aſſizes, where if they refuſe the ſaid oaths,
" ſhall be incapable of any office, and continue bound to
" good behaviour, and if they refuſe the declaration menti
" in 30 Car. 2. the ſhall ſuffer as popiſh recuſants convi

Sect. 5. It ſeems to be the intention of this ſtatute, to
the government an election to proceed either on the mild me
therein preſcribed, or the more ſevere one appointed by the
mer laws, according to the circumſtances of the caſe, and qu
of the offender, &c.

1 Comm. 368. *Sect.* 6. As to the ſecond offence of this kind, *viz.* Th
refuſing the oath of abjuration, the ſame depends on thoſe
which the nation has been of late under a neceſſity of eſtabliſh
by adding a new limitation to the law relating to the ſucce
of the crown, excluding all Papiſts from a poſſibility of inher
it; who, if they be true to their engagements to their own
ligion, cannot but be falſe to thoſe they may make to ours,
can never be expected to execute thoſe laws, which they ca
but think void, as being repugnant to the laws of God; o
defend that faith which they think damnable; or to obſ
thoſe oaths, which ſeem to them to have been ordained for
ſupport of irreligion. And from theſe conſiderations they
been diſabled from inheriting the crown, it ſeeming of abſo
neceſſity in our preſent circumſtances for the good of the com
nity, to make ſuch an alteration in law, which like all other hu
laws depending merely on the policy of men, ſeems to have
thing in it ſo ſacred as to oblige the people unalterably to a
by it to the hazard of their common ſafety, peace and happi
for the ſake whereof it was at firſt ordained. For ſurely, t
cannot be ſo much danger to the common good from ſuch a
teration, as muſt needs follow from the government of a pr
whoſe conſcience is under the influence of thoſe, who are in
cable enemies to the religion of his country, and who thinks
ſelf bound by his duty to God and his church to promote
intereſt, which his people think themſelves under the like
gations to oppoſe. From which unhappy circumſtances no
can be expected but endleſs factions, diſcords, irreconci
jealouſies and diſtruſts between prince and people, which if
break not into an open rupture, will at leaſt be attended
ſuch convulſions and uneaſineſſes, as render a ſtate of goverm
ſcarce one degree more ſecure than a ſtate of anarchy and
fuſion.

Sect. 7. For the remedying of such like inconveniences, it having been thought proper to exclude all papists from the crown, was likewise thought expedient to secure the present settlement, by obliging all officers, &c. to take the oath of abjuration. To which it is enacted by 13 Will. 3. c. 6. & 1 Geo. 1. st. 2. 13. "That all persons who shall be admitted, &c. into any office civil or military, (not being an office of inheritance, executed by a lawful deputy) or shall receive any pay, salary, fee or wages, by reason of any patent or grant from the king, or that have a command or place of trust under the king, &c. or shall be admitted into any service or employment in the king's house-hold or family, or of his royal highness George prince of Wales, or her royal highness the princess of Wales, or their issue, and all ecclesiastical persons, heads or governors, of what denomination soever, and all other members of colleges and halls in any university, that shall be of the foundation, or enjoy any exhibition, being of, or as soon as they shall attain the age of eighteen years, and all persons teaching or reading to pupils in any university or elsewhere, and all school-masters and ushers, and all preachers and teachers of separate congregations, high or chief constables, and every person who shall act as serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising in any manner as such, in any court or courts whatsoever within that part of Great Britain called England, shall, within three months (*a*) after they shall be admitted into or enter upon any such preferment, benefice, office, or place, or come into such capacity, or take upon them such practice, employment, or business, take and subscribe the oaths of allegiance, supremacy and abjuration, (*b*) at one of the courts at Westminster, or at the general quarter-sessions of the peace where they shall reside: or otherwise they shall be *ipso facto* adjudged incapable, and disabled in law, to have, occupy, or enjoy the said offices, &c. and if they shall by themselves, or deputy or trustee, execute any the said offices, &c. and shall be thereof convict, &c. they shall be disabled to prosecute any suit at law or equity, or to be guardians, executors, or administrators, or capable of any legacy or deed of gift, or to be in any office within this realm, or to vote at any election for members of parliament, and shall forfeit five hundred pounds, &c."

1 Comm. 368.

(a) By 2. Geo. 2. c. 31. 9 Geo. 2. c. 26. 16 Geo. 2. c. 30. the time is enlarged to six months and other regulations enacted.

(b) After the death of the late pretender who assumed the title of King of England by the name of James the Third, it became absurd to renounce a person being dead,

before the 6 Geo 3. c. 53. has altered the form of abjuration so as to renounce the defendants of the said James. But no provision is made for altering in like manner the makers form of affirmation.

Sect. 8. And it is farther enacted by the said statute, "That any two justices of the peace, or any other person or persons who shall be by the king for that purpose specially appointed, by order in the privy council or by commission under the great seal, may administer and tender the said oaths to any

Vide 12 Co. 131.

"perſon whatſoever, whom they ſhall ſuſpect (a) to be dange-
"rous or diſaffected; and that if any perſon, to whom the ſa
"oaths ſhall be ſo tendered, ſhall neglect or refuſe (b) to ta
"the ſame; or if any perſon, being ſummoned by the ſaid ju
"tices, &c. in order to take the ſaid oaths, either in proper pe
"ſon, or by notice left at his place of abode with one of the f
"mily, ſhall neglect or refuſe to appear, &c. ſuch refuſal ſh
"be certified at ſeſſions, &c. and from thence to the king's ben
"or chancery, &c. and every ſuch perſon ſo neglecting to ta
"the ſaid oaths, ſhall be adjudged a popiſh recuſant convi
"&c."

(a) It ſeems that a bare ſuſpicion is not ſufficient, but there muſt be ſome good cauſe of ſuſpicion, and that the cauſe of ſuſpicion is traverſable. 3 Burn. 249.

(b) A perſon cannot be ſaid to refuſe the oaths unleſs they be read to him or offered to be read. 3 Burn. 249. But ſee 5 Mo 316. Salk. 428. Jones 121.

Sect. 9. And it is farther enacted by the ſaid ſtatute, "Th
"if any member of either univerſity ſhall neglect to take
"ſubſcribe the ſaid oaths according to the intent of the ſaid
"or to produce a certificate thereof, under the hand of
"proper officer of the reſpective court, and cauſe the ſame
"be entered in the regiſter of the proper college or hall, wi
"one month after his having taken and ſubſcribed the ſaid oat
"and if the perſons in whom the right of election of ſuch m
"ber ſhall be, do neglect to elect ſome fitting perſon in his ſt
"within twelve months, &c. that then the king may, under
"great ſeal or ſign manual, nominate ſome fitting perſon, q
"lified according to the local ſtatutes of ſuch college, &c. an
"the head of any college, &c. ſhall neglect to admit ſuch no
"nee, by the ſpace of ten days after ſuch admiſſion ſhall be
"manded of him, that then the local viſitor ſhall admit the
"nominee; and if ſuch viſitor ſhall neglect or refuſe to a
"ſuch perſon within the ſpace of one month after the ſame
"be demanded, that then the court of king's bench may iſſu
"writ of mandamus to ſuch viſitor to admit ſuch nominee, &

Sect. 10. And it is farther enacted by the ſaid ſtatute, "T
"no peer ſhall vote or make his proxy, or ſit in the houſe of p
"during any debate, and that no member of the houſe of c
"mons ſhall vote or ſit during any debate in the ſaid houſe
"the ſpeaker is choſen, until he ſhall have taken the ſaid o
"&c. under pain of the diſabilities and forfeitures above m
"tioned, *&c.*"

SOMEWHAT ſimilar to the oaths required by the corporation and teſt acts, and the above mentioned, are the ceremonies and oaths required previous to being naturali 4 Comm. 58. for which, ſee 1 Jac. 1. c. 2. 7 Ann. c. 4. 10 Ann. c. 5. 4. Geo. 2. c 20 Geo. 2. c. 44. For the declaration againſt popery, vide 30 Car. 2 ſt. 2. c. 1.—For oaths to be taken by peers of Scotland, and by privy counſellors, vide 6 Ann. c. 1 Geo. 1. c. 4—For the Moravian affirmation, 22 Geo. 2. c. 30. Quakers profeſſi belief, 1 Will. 3. c. 18. Quakers affirmation, 8Geo. 1. c. 6. and for the caſes in w it is allowed to be taken, 5 Mod. 403. Str. 441, 527, 856, 872, 1219.

CHAPT

CHAPTER THE TWENTY-FIFTH.

Of FELONY.

OFFENCES more immediately againſt the ſubject are either capital or not capital.—The capital are either by the mmon law, or by ſtatute.

Sect. 1. Thoſe by the common law come generally under the e of felony, which, *ex vi termini*, ſignifies, *quodlibet crimen eo animo perpetratum*, and can be expreſſed by no periphraſis, word equivalent, without the word *felonicè*. Vide Spelm. Gloſſ. verb. Felonia 214. Co. Lit. 391.

Sect. 2. Felony is ſaid to be included in high treaſon, and conſequently a pardon of felony diſcharges an indictment of high treaſon, if it want the word *proditorie*. Sum. 11. 3 H. 7, 10. 3 Inſt. 15. 4 Comm. 94, 97.

Sect. 3. It is always accompanied with an evil intention, and therefore ſhall not be imputed to a mere miſtake or miſanimadverſion, as where perſons break open a door, in order to execute a warrant, which will not juſtify ſuch a proceeding; *affectio enim nomen imponit operi tuo*; *item crimen non contrahitur niſi nocendi cuntas intercedat.* But the bare intention to commit a felony is not criminal, that at the common law it was puniſhable as felony, where it miſſed its effect through ſome accident no way lightening the guilt of the offender. But it ſeems agreed at this day. That felony ſhall not be imputed to a bare intention to commit it, yet it is certain that the party may be very ſeverely finned for ſuch an intention. Bract. 1. c. 4. S. P. C. 17. 27. 1 Lev. 146. 1 Sid. 230 231. Kely. 24. Sum. 61. 5 Mod. 206.

FELONY in the general acceptation of our Engliſh law, comprizes every ſpecies of crime which occaſioned at common law the forfeiture of land or goods. This moſt frequently happens in thoſe crimes for which a capital puniſhment either is, or was liable to be inflicted. All offences therefore now capital are in ſome degree or other felony: and this likewiſe the caſe with ſome other offences which are not puniſhed with death; as ſuicide, where the party is already dead; homicide, by chance medley or in ſelf-defence; petit larceny, or pilfering; all which are (ſtrictly ſpeaking) felonies, as they ſubject the committers of them to forfeitures. The definition of felony, therefore, ſeems to be, "an offence which occaſions a total forfeiture of either lands or goods, or both at the common law; and to which capital or other puniſhment *may be* ſuperadded according to the degree of guilt." But felony may be without inflicting capital puniſhment, as in the inſtanced of ſelf murder, excuſable homicide and petit larceny; and it is poſſible that capital puniſhments may be inflicted, and yet the offence be no felony; as in the caſe of hereſy by the common law, which, though capital, never worked any forfeiture of lands or goods; (3 Inſt. 43) an inſeparable incident to felony. And of the ſame nature is the puniſhment of ſtanding mute, without pleading to an indictment; which is capital but without any forfeiture, and therefore ſuch ſtanding mute is no felony. In fact the true criterion of felony is forfeiture. The idea of felony is indeed ſo generally connected with that of capital puniſhment, that we find it hard to ſeparate them; and to conform to uſage the interpretations of the law do now conform. Therefore if a ſtatute makes a new offence felony, the law implies that it ſhall be puniſhed with death, as well as with forfeiture, unleſs the offender prays the benefit of clergy, which all felons are entitled once to have, unleſs the ſame is expreſsly taken away by ſtatute. 4 Comm. 94 to 99.

CHAPTER THE TWENTY-SIXTH.

Of CASUAL DEATH and of DEODANDS.

OF capital offences at common law more immediately against the ſubject, there are three principal kinds: Firſt, Such as are committed againſt his life. Secondly, Such as are against his goods. Thirdly, Such as are againſt his habitation.

Book 2d. c. 17. *Sect.* 1. There is another mix'd kind of capital offence which conſiſts in the hindrance of the due proceſs of public justice, which I ſhall conſider in the ſecond book, wherein I ſhall treat of the means of bringing offenders to their due puniſhment.

Bract. l. 3. c. 4. *Sect.* 2. Offences againſt the life of a man come under the general name of homicide, which in our law ſignifies the killing of a man by a man.

1 Hale 471 472 *Sect.* 3. But before I treat hereof, it may not be improper to conſider the killing of a man merely *per infortunium*, occaſioned by ſome animal or thing without life, without the default or procurement of another man, as where one is killed by a fall from a horſe or cart, *&c.* which, though it be not properly homicide nor puniſhable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raiſe a greater abhorrence of murder, and the unhappy inſtrument or occaſion of ſuch death is called a deodand, and forfeited to the king, in order to be diſpoſed of in pious uſes by the king's almoner; as alſo are all ſuch weapons whereby one man kills another.

Pult. 125. 5 Co. 110. 3 Inſt. 57, 58. Crom. 31. 1 Hale 34. 419.

S. P. C. 21. 3 Inſt. 58. Sum. 34. Pult. 125. Dalt. c. 97. 2 Keb. 719, 806.

Sect. 4. It ſeems clearly ſettled, that a horſe, *&c.* killing an infant within the age of diſcretion, are as much forfeited as if he were of age: But formerly it was holden, That a horſe or cart, *by a fall from* which an infant was ſlain, were not forfeited, perhaps for this reaſon (1), becauſe the misfortune might rather ſeem owing to the indiſcretion of the infant than any default in the horſe, *&c.* But this diſtinction has not been allowed of late, for the law does not ground the forfeiture on any default in the things forfeited, ſince it extends it to things without life, to which 'tis plain, that no manner of fault can be imputed.

(1) The forfeiture of deodands originated in the blind days of popery and ſuperſtition. They were deſigned to purchaſe, by propitiatory maſſes, an expiation for the ſouls of thoſe as were ſnatched away by untimely death. But the preſumed innocency of children will render ſuch atonement unneceſſary. Therefore no deodand is due, where an infant under the age of diſcretion is killed by a fall *from* any thing that is not in motion, 1 Comb. 300. But if the inſtrument move to the death, either of an infant, or an adult, it is forfeited, or an inquiſition found as a deodand. 3 Inſt. 57. 1 Hale 422.

Sect.

Sect. 5. Alſo by the opinion of our ancient authors, things ed to a freehold, as the wheel of a mill, a bell hanging in a eple, &c. may be deodands, but by the latter reſolutions they not, unleſs they were ſevered before the accident happened. S. P. C. 20. Pult. 124. 1 Sid. 206, 207. 1 Lev. 136. Raym. 97. 6 Mod. 187. 1 Keb. 723, 745. Str. 61. Co. Lit. 53 283

Sect. 6. However, as it is agreed by all, a ſhip in ſalt water, ether in the open ſea or within the body of a county, from ich a man falls and is drowned, is not forfeited, becauſe per- s at ſea are continually expoſed to ſo many perils, that the imputes ſuch misfortunes happening there, rather to them n to the ſhip. Alſo it ſeems clear, that when a man riding on orſe over a river is drowned through the violence of the ſtream, horſe is not forfeited, becauſe not that, but the waters uſed his death (2): But it is ſaid, that a ſhip by a fall from ich a man is drowned in the freſh water ſhall be forfeited, t not the merchandize therein, becauſe they no way contribute his death. And by the ſame reaſon it ſeems, that if a man ing on the ſhafts of a waggon fall to the ground and break his k, the horſes and waggon only are forfeited, and not the ding; becauſe it no way contributed to his death; for which ſe, where a thing not in motion cauſes a man's death, that t thereof only which is the immediate cauſe is forfeited. As ere one climbing upon the wheel of a cart while it ſtands ſtill, s from it and dies of the fall, the wheel only is forfeited: but he had been killed by a bruiſe from one of the wheels being motion, the loading alſo would have been forfeited, becauſe weight thereof made the hurt the greater; and it is a gene- rule, that wherever the thing which is the occaſion of a man's th is in motion at the time, not only that part thereof which mediately wounds him, but all things which move together h it, and help to make the wound more dangerous, are for- ed alſo; for the rule is, *Omnia quæque movent ad mortem, t deodanda.* S. P. C. 20, 21. Pult. 124, 125. 3 Inſt. 58. Summary 33. 1 Hale 422. Salk. 220. C. Jac. 483. 2 Roll. 23. Popham 136. (2) Quere if it had appeared that the horſe had thrown him Sayer. 249. F. Cor. 341. Bract. l. 3. c. 5.

Sect. 7. In all theſe caſes, if the party wounded die not of wound within a year and a day after he received it, there ll be nothing forfeited, for the law does not look on ſuch a und as the cauſe of a man's death, after which he lives ſo g: But if the party die within that time, the forfeiture ſhall ve relation to the wound given, and cannot be ſaved by any enation or other act whatſoever in the mean time. Sum. 55. S. P. C. 21. Dalt. c. 97. Plowd. 260. Keilw. 68.

Sect. 8. However, nothing can be forfeited as a deodand, r ſeized as ſuch, till it be found by the coroner's inqueſt to ve cauſed a man's death; but after ſuch inquiſition, the riff is anſwerable for the value of it, and may levy the ſame 5 Co. 110. Co. Lit. 115. Dalt. c. 97. S. P. C. 21. Pult. 125. See 4 Ed. 1. de Offic. Coronatoris. 1 Hale 418.

on

on the town where it fell, and therefore the inqueſt ought to [illegible] the value of it. (3)

(3) Upon inquiſitions of this kind the jury generally find the value of the deodand [illegible] be as ſmall as poſſible, and even confine that value, according to the circumſtances of [illegible] caſe, to the very thing or part of the thing itſelf which cauſed the death, 2 Bac. Abr. [illegible] This practice the court of king's bench have impliedly ſanctioned, by refuſing to [illegible] it on an application in favour of the crown or its grantee, Foſ. 206. 2 Bar. K. B. [illegible] Nor can ſuch an inquiſition be taken by the grand jury on default of the coroner. 1 Bur. 19 (and when taken by the coroner, it may be moved and traverſed, 1 Burr. 20. 3 Hal. 416) becauſe it is tranſacted in ſecret, taken *ex parte*, and intended as the platform of [illegible] odious ſuperſtitious claim, 4 Inſt. 196. repugnant to the principles of ſound reaſon [illegible] true policy. Foſter 266.

CHAPTER THE TWENTY-SEVENTH.

OF FELO DE SE.

HOMICIDE properly ſo called, is either againſt a man's own life, or that of another.—In treating of homicide againſt a man's own life, I ſhall conſider: Firſt, in what caſes a man ſhall be ſaid to be a *felo de ſe*. Secondly, what he ſhall forfeit for this offence.

1 Hale 411. Crom 30, 31. Sum. 28. Dalt. c. 92. 3 Inſt. 54.

Sect. 1. As to the firſt point, I ſhall take it for granted, That in this as well as in all other felonies, the offender ought to be of the age of diſcretion, and *compos mentis*; and therefore, that an infant killing himſelf under the age of diſcretion, or a lunatic during his lunacy, cannot be a *felo de ſe*.

3 Mod. 100.

Sect. 2. But here I cannot but take notice of a ſtrange notion which has unaccountably prevailed of late, That every one who kills himſelf, muſt be *non compos* of courſe; for it is ſaid to be impoſſible, that a man in his ſenſes ſhould do a thing ſo contrary to nature and all ſenſe and reaſon.

Plow. 261. Comb. 2, 3.

Sect. 3. If this argument be good, ſelf-murder can be no crime, for a madman can be guilty of none: But it is wonderful that the repugnancy to nature and reaſon, which is the higheſt aggravation of this offence, ſhould be thought to make it impoſſible to be any crime at all, which cannot but be the neceſſary conſequence of this poſition, that none but a madman can be guilty of it. May it not with as much reaſon be argued, that the murder of a child or of a parent is againſt nature and reaſon, and conſequently that no man in his ſenſes can commit it? But has a man therefore no uſe of his reaſon, becauſe he acts againſt right reaſon? Why may not the paſſions of grief and diſcontent tempt a man knowingly to act againſt the principles of nature and reaſon in this caſe, as thoſe of love, hatred and revenge, and ſuch like, are too well known to do in others?

Sect. 4. However our laws have always had ſuch an abhorrence of this crime, that not only he who kills himſelf with a deliberate

eliberate and direct purpose of so doing, but also in some ca- Dalt. c. 144.
he who maliciously attempts to kill another; and in pursu- 44 Ass. 55.
e of such attempt unwillingly kills himself, shall be adjudged B. Cor. 12 14.
he eye of the law a *felo de se*. For wherever death is caused 3 Inst. p. 54.
an act done with a murdrous intent, it makes the offender a
rderer; and therefore if A. discharge a gun at B. with an in-
to kill him, and the gun breaks and kills A. or if A. strike
o the ground, and then hastily falling upon him wound him
with a knife which B. happens to have in his hand and die, in
h these cases A. is *felo de se*, for he is the only agent.

Sect. 5. But if B. being so assaulted had been driven to the Staun. 16.
ll, and holden up a pitch-fork or knife, standing in his de- Sum. 28, 29.
ce, and A. had justly run upon the same and been slain, B. Pult 119.
uld be adjudged to kill him in his own defence. And for the Crom. 28.
e reason perhaps in the case above, if B. after he had fallen to 3 Inst. 54.
ground, had holden up a knife or sword in his defence, and Vide 1 Hale 413 & 493 upon this case; which he contends is misrepresented both by Dalton and Coke, and that it was adjudged homicide per infortunium.
had fallen thereon and been slain, B. should be adjudged to
him *se defendendo*; for here B. exerts his strength in his own
ence, and by so doing occasions the mortal wound received
A.

Sect. 6. He who kills another upon his desire or com- Keilw. 136.
nd, is in the judgment of the law as much a murderer, as if
had done it merely of his own head, and the person killed
ot looked upon as a *felo de se*, inasmuch as his assent was mere-
void, as being against the laws of God and man: But where
o persons agree to die together, and one of them at the persua-
n of the other buys ratsbane, and mixes it in a potion, and both
nk of it, and he who bought and made the potion, survives by
g proper remedies, and the other dies, perhaps it is the bet- Moor 754.
opinion, that he who dies shall be adjudged a *felo de se*, be-
use all that happened was originally owing to his own wicked
rpose, and the other only put it in his power to execute it in
t particular manner.

Sect. 7. As to the second point, *viz.* What such an offender S. P. C. 188,
ll forfeit, it seems clear that he shall forfeit all chattels, real or 189, 262, 263.
rsonal, which he hath in his own right, and also all such chat- 1 Hale 413.
s real whereof he is possessed either jointly with his wife, or in Finch. 216.
r right; and also all bonds and other personal things in action Sum. 29.
longing solely to himself; and also all personal things in ac- Crom. 31.
n, and as some say, entire chattels in possession, to which he 3 Inst. 55.
s entitled jointly with another, on any account except that of 19 H. 6. 47.
erchandize: but it is said, that he shall forfeit a moiety only 8 E. 4. 24.
such joint chattels as may be severed, and nothing at all of Raym. 7.
at he was possessed of as executor or administrator. Plow. 243, 259, 262, 323. 4 Comm. 190. 193.

Sect. 8. However the blood of a *felo de se* is not corrupted, 1 Hale 413.
r his lands of inheritance forfeited, nor his wife barred of her Plow. 261 262
wer.

Sect. 6.

5 Co. 110. 3 Inſt. 54. 1 Saund. 362. 1 Hale 414. 1 Sid. 150, 162. 2 Mod. 53. 3 Mod. 100. 241, 242. Con. 1 Lev. 8. 1 Keb. 67, 68. 4 Comm. 190.

Sect. 9. Alſo no part of the perſonal eſtate is veſted in the king, before the ſelf-murder is found by ſome inquiſition; and conſequently the forfeiture thereof is ſaved by a pardon of the offence before ſuch finding.

Plow. 260. Sum. 29. 5 Co. 110. 1 Hale 412. 4 Com. 190.

Sect. 10. But if there be no ſuch pardon, the whole is forfeited immediately after ſuch inquiſition, from the time ſuch mortal wound was given, and all intermediate alienations are avoided.

Sum. 29. 3 Inſt. 55. 47 Ed. 3. 76. See B. 2. c. 9. ſ. 52. 1 Hale 414 to 417. Far. 16. Salk. 190, 377. Carth. 72. Skin. 45. Stamf. 183. 3 Mod. 80, 238 1 Mod. 82. 2 Keb. 859. 1 Vent. 181, 182. 2 Vent. 38. 2 Jones 2. 2 Hale 59. Lev. 8. Sid. 150.

Sect. 11. And ſuch inquiſitions ought to be by the coroner *ſuper viſum corporis*, if the body can be found; and an inquiſition ſo taken, as ſome ſay, cannot be traverſed.

3 Inſt. 55. Sum. 29. 2 Lev. 141. 1 Hale 414. Carth. 73. 1 Burr. 18. 1 Freem. 420. 1 Roll. 217. 1 Sid. 101, 144.

Sect. 12. But if the body cannot be found, ſo that the coroner who has authority only *ſuper viſum corporis*, cannot proceed, the inquiry may be by juſtices of peace, who by their commiſſion have a general power to inquire of all felonies; or in the king's bench, if the felony were committed in the county where the ſaid court ſits; and ſuch inquiſitions are traverſable by the executor, *&c.*

Salk. 377. 7 Mod. 16. 1 Mod. 82.

Sect. 13. Alſo all inquiſitions of this offence being in the nature of indictments, ought particularly and certainly to ſet forth the circumſtances of the fact; as the particular manner of the wound, and that it was mortal, *&c.* and in the concluſion add, that the party in ſuch manner murdered himſelf.

2 Lev. 140 152. 3 Mod 100. 12 Mod. 112. Vide Salk. 377.

Sect. 14. Therefore if either the premiſſes be inſufficient, as if it be found that the party flung himſelf into the water, *& ſeipſum emergit*, which is nonſenſe, becauſe *emergo* ſignifies only to riſe out of the water; or if there be wanting the proper conclusion, *& ſic ſeipſum murdravit*, the inquiſition is not good.

1 Sid. 225 259. 3 Mod. 101. 1 Keb. 907.

Sect. 15. Yet if it be full in ſubſtance, the coroner may be ſerved with a rule to amend a defect in form.

Fitzg 6. See 1 Saund. 273. for proceſs from the Crown-Office on ſuch an inquiſition againſt a debtor of a felo de ſe.

CHAPTER THE TWENTY-EIGHTH.

OF JUSTIFIABLE HOMICIDE.

HOMICIDE againſt the life of another either amounts to felony, or does not. That which amounts not to felony is either juſtifiable, and cauſes no forfeiture at all, or excuſable, and cauſes the forfeiture of the party's goods.

d firſt of juſtifiable homicide; concerning which I ſhall iſe theſe general rules.

. 1. Firſt, it muſt be owing to ſome unavoidable neceſ- to which the perſon who kills another muſt be reduced ut any manner of fault in himſelf. Vid. ſect. 22.

. 2. Secondly, There muſt be no malice coloured under nce of neceſſity; for wherever a perſon who kills another, n truth upon malice, and takes occaſion, from the appear- of neceſſity, to execute his own private revenge, he is guil- murder. 2 Roll. 120. Kely. 28. Sum. 38. Bract. l. 3. c. 4. 21 Edw. 1. de Mal. in Parcis.

. 3. Thirdly, According to the opinion of the old books which in this reſpect ſeem to be contradicted by others more ern (b), it ſeems, that one may ſet forth a fact, amounting to able homicide, in a ſpecial plea to an indictment or appeal urder; and that the ſame being found true, he ſhall be diſ- d, without being arraigned, or enforced to plead Not guil- And indeed it ſeems extremely hard, that a ſheriff or judge condemn or execute a criminal, &c. ſhould be forced, on volous proſecution, to hold up their hands at the bar for it, But it is agreed, that no one can plead a fact amounting micide *ſe. defendendo*, or by miſadventure, but that in ſuch e the defendant muſt plead Not guilty, and give the ſpecial er in evidence: And it is alſo agreed, that where a ſpecial amounting to juſtifiable homicide, is found by the jury, the is to be diſmiſſed, without being obliged to purchaſe any on, &c. (a) 22 Aſſ. 55. 27 Aſſ. 41. 37 H. 6. 20 21. Dalt. 150. B. App. 5, 129. B. Cor. 57, 87, 89. (b) 35 H. 6. 11. 58. B. App. 122. 2 Inſt. 316. Co. Lit. 283. Sum. 38. 1 Hale 478.

uſtifiable homicide is either of a public or private nature. of a public nature, is ſuch as is occaſioned by the due ex- ion or advancement of public juſtice.—That of a private na- is ſuch as happens in the juſt defence of a mans perſon, e, or goods.

nd firſt, I ſhall conſider juſtifiable homicide in the due ex- ion of public juſtice. As to which the following rules muſt bſerved.

. 4 Firſt, The judgment, by virtue whereof any perſon t to death, muſt be given by one who has juriſdiction in the e; for otherwiſe both judge and officer may be guilty of fe- Dalt. c. 98. 1 Hale 497. 10 Co. 76. 22 E. 4. 33. Sum. 35.

. 5. And therefore, if the court of common pleas give ment on an appeal of death, or juſtices of peace on an indict- af treaſon, and award execution, which is executed, both the es who give, and the officers who execute the ſentence, are y of felony, becauſe theſe courts having no more juriſdiction theſe crimes than mere private perſons, their proceedings on are merely void, and without any foundation. 4 Comm. 178. 1 Hale 497. 500. 3 Inſt. 48. 5 Rep. 106. Cro. Car. 98. Moor 333.

Sect. 6.

Sum. 35. Dalt. c. 98. 1 Hale 501.

Sect. 6 But if the juſtices of peace, on an indictment of paſs, arraign a man of felony, and condemn him, and executed, the juſtices only are guilty of felony, and not the ſicers who execute their ſentence; for the juſtices had a juri tion over the offence, and their proceedings were irregular erroneous only, but not void,

Co. Lit. 128. 2 Aſſ. 3. S. P. C. 13 196 1 Hale 497. 11 H. 4. 12. Plow. 306. 3 Inſt. 131.

Sect. 7. Secondly, The judgment muſt be executed by lawful officer.

Sect. 8. Indeed it was formerly holden, that any one m as lawfully kill a perſon attainted of treaſon or felony, as a or other wild beaſt; and anciently a perſon condemned i appeal of death, was delivered to the relations of the dece in order to be executed by them.

27 Aſſ. 41. 1 Hale 501. B. App. 69. Cor. 67, 197. Co. Lit. 128. Dalt. c. 98. Sum. 35.

Sect. 9. But at this day, as it ſeems agreed, if the ju who gives the ſentence of death, and, *a fortiori*, if any pri perſon execute the ſame, or if the proper officer himſelf without a lawful command, they are guilty of felony.

35 H. 6. 58. 1 Hale 454 501 B. App. 5. S. P. C. 13. Sum. 36, 272. See B. 2. c. 51.

Sect. 10. Thirdly, The execution muſt be purſuant of, warranted by the judgment, otherwiſe it is without author and conſequently if a ſheriff behead a man where it is no of the ſentence to cut off the head, he is guilty of felony (1).

Finch. 31. 3 Inſt. 52. 211. 2 Hale 411. 4 St. Tr. 129. Foſter 268.

(1) That is, if the officer varieth from the judgment, of his own head and wi warrant or the colour of authority, but not if he is authoriſed by cuſtom or by wa from the crown. For although the king cannot by his prerogative vary the execut as to aggravate the puniſhment beyond the intention of the law; yet it doth not fo that he, who may remit part of the judgment or wholly pardon the offender cannot gate his puniſhment with regard to the pain or infamy of it. Foſter 267.

AND now we are come to juſtifiable homicide in the due vanc ment of public juſtice, which I ſhall conſider,—Firſt in lation to criminal,—Secondly, in relation to civil cauſes.

22 Aſſ. 55. B. Cor. 87, 89. S. P. C. 13. 3 Inſt. 221. Dalt. c. 98. Sum. 36. Crom. 30. F. Cor. 192, 258, 261. 1 Hale 489. Foſter 271.

Sect. 11. And Firſt, Homicide in the advancement of p lic juſtice in criminal cauſes may be juſtified in ſeveral caſes; firſt, if a perſon, having actually committed a felony, will not fer himſelf to be arreſted, but ſtand on his own defence, or ſo that he cannot poſſibly be apprehended alive by thoſe who p ſue him, whether private perſons or public officers, with without a warrant from a magiſtrate, he may be lawfully by them.

Furem ſi aliter capi non poſſet, occidere permittunt. Sternh. de jure Goth.

See authorities above cited. F. Cor. 179, 261.

Sect. 12. Secondly, If an innocent perſon be indicted felony, where, in truth no felony was committed, and will ſuffer himſelf to be arreſted by the officer who has a warrant that purpoſe, he may lawfully be killed by him, if he can otherwiſe be taken; for there is a charge againſt him upon cord, to which at his peril he is bound to anſwer. *Sect.*

13. Thirdly, If a criminal, endeavouring to break 1 Hale 481. 494.
l, assault his gaoler, he may be lawfully killed by him 495, 496.
affray.

14. Fourthly, If those who are engaged in a riot, or Crom. 30. 158.
ble entry, or detainer, stand in their defence, and continue 1 Sum. 37.
ce in opposition to the command of a justice of peace, &c. Staund. 13.
ft such justice endeavouring to arrest them, the killing of 2 Inst. 52.
may be justified; and so perhaps may the killing of dan- Poph. 121.
rioters by any private persons, who cannot otherwise sup-
hem, or defend themselves from them, inasmuch as every
person seems to be authorised by the law to arm himself
purposes aforesaid.

efore a stranger who interposes to part the combatants in an affray, giving notice
n of that intention, and they assault him; if in the struggle he should chance to
is would be justifiable homicide; for it is every man's duty to interpose for the pre-
n of the public peace, and for the prevention of mischief. Foster 272. Vide also
t Act, 1 Geo. 1. c. 5.

15. Fifthly, If trespassers in a forest, chace, park, S. P. C. 13.
rren, or any inclosed ground wherein deer are kept, Crom. 30.
ot render themselves to the keepers upon an hue and cry Dyer 326.
to stand to the king's peace, but fly from, or defend them- 1 Hale 491.
against them, they may be slain by force of the statute 9 St. Tr. 315.
defactoribus in parcis, 21 Ed. 1. st. 2. and 3 and 4 Will.
ry, c. 10.

16. Sixthly, If either of the parties fighting in a Dalt. c. 98.
t allowed by law, for the trial of some special cases, Plow. 9.
in, he who kills him is justified, and the death of the 3 Inst. 221.
is imputed to the just judgment of God, who is presumed 37 H. 6. 21.
ve the victory to him who fights in maintenance of the

T in all these cases there must be an apparent necessity on the officer's side, that
ty could not be arrested or apprehended, the riot could not be suppressed, the pri-
could not be kept in hold, the deer stealers could not but escape, unless such homi-
were committed; otherwise without such absolute necessity it is not justifiable,
m. 180.

17. Secondly, Homicide in the advancement of jus- 1 Roll. 189.
in civil causes, may also be justified in some cases.—As Foster 270.
a sheriff, &c. attempting to make a lawful arrest in a Sum. 37.
action, or to retake one who has been arrested and made 3 Inst. 56.
scape, is resisted by the party, and unavoidably kills him Crom. 24.
e affray. Dalt. c. 98.
1 Hale 494.
4 Comm. 180.

18. And in such case the officer is not bound to give Sum. 37.
but may stand his ground and attack the party. Foster 292.
Strange 499.
6 St. Tr. 195.

19. But no private person of his own authority can Crom. 30.
a man for a civil matter, as he may for felony, &c.

Sect. 20.

Sum. 37.
1 Hale 481.
Poſt. 161.
Foſter 271.
Puff. L. of N. 455.

Sect. 20. Neither can the ſheriff himſelf lawfully kill those who barely fly from the execution of any civil proceſs.

AND now I am to conſider juſtifiable homicide of a public nature, in the juſt defence of a man's perſon, houſe, or goods. In treating whereof I ſhall ſhew, Firſt, in what caſes the killing of a wrong-doer, may be juſtified by reaſon of ſuch defence. Secondly, where the killing of an innocent perſon may be juſtified.

24 H. 8 c. 5.
Dalt. c. 98.
1 Hale 486. 487, 493, 494.
Sum. 32.
S. P. C. 14.
B. Cor. 100, 102.
F. Cor. 179, 192, 194, 261, 305.
C. Car. 544.
26 Aſſ. 23.
Crom. 26.
Kely. 128, 129.
Foſ. 271, 275.
9 Ann. c. 16.
(a) Vide ſect 25.

Sect. 21. And firſt the killing of a wrong-doer, in making of ſuch defence, may be juſtified in many caſes; as where a man kills one who aſſaults him in the highway to rob or murder him; or the owner of a houſe, or any of his ſervants, or lodgers, &c. kill one who attempts to burn it, or to commit in it murder, robbery, or other felony (a); or a man kills one who attempts to raviſh her; (1) or a ſervant coming ſuddenly and finding his maſter robbed and ſlain, purſues upon the murderer immediately and kills him; for he did it in the height of his ſurprize, and under juſt apprehenſion of the like attempt upon himſelf:—But in other circumſtances he could not have juſtified the killing of ſuch an one, as he ought to have apprehended him, &c.

(1) The injury intended can never be repaired or forgotten; and nature to recommend that ſex amiable hath implanted in the female heart a quick ſenſe of honour, the principle of virtue which kindleth and inflameth at every ſuch inſtance of brutal luſt. Foſ. 274. But see 34. Prin. P. L. 211.—So too, the feelings of a parent or a huſband which involuntarily actuate them at the moment to kill the forcible raviſher of a wife or a daughter's honour are juſtifiable. 1 Hale 488. And no doubt the forcibly attempting a crime of a more deteſtable nature may be equally reſiſted by the death of the unnatural aggreſſor. 4 Comm. 181.

Crom. 27,
Sum. 56
1 Hale 405, 440, 441.

Sect. 22. Neither ſhall a man in any caſe juſtify the killing another by a preference of neceſſity, unleſs he were himſelf wholly without fault in bringing that neceſſity upon him; for if a man, in defence of an injury done by himſelf, kill any perſon whatſoever, he is guilty of manſlaughter at leaſt. So where divers rioters wrongfully detain a houſe by force, and kill thoſe who attack it from without, and endeavour to burn it.

Sum. 40, 57.
C. Car. 538.
Dalt. c. 98.
1 Hale 485, 486, 488.
Foſter 273.

Sect. 23. Neither can a man juſtify the killing another in defence of his houſe or goods, or even of his perſon, for a bare private treſpaſs; and therefore he that kills another who claiming a title to his houſe, attempts to enter it by force, and ſhoots at it, or that breaks open his window in order to arreſt him, or that perſiſts in breaking his hedge after he is forbidden, is guilty of manſlaughter; and he that in his own defence kills another that aſſaults him in his houſe in the day-time, and plainly appears to intend to beat him only, is guilty of homicide *ſe defendendo*, for which he

s goods, but is pardoned of courſe; yet it ſeems that te perſon, and, *a fortiori*, an officer of Juſtice, who unavoidably to kill another in endeavouring to de- imſelf from, or ſuppreſs dangerous rioters, may juſ- fact, inaſmuch as he only does his duty in aid of the juſtice. Pult. 119. Sum. 40, Crom. 28. 3 Inſt. 138. Poph. 121.

24. And I can ſee no reaſon why a perſon, who t provocation is aſſaulted by another in any place what- in ſuch a manner as plainly ſhews an intent to murder s by diſcharging a piſtol, or puſhing at him with a ſword, &c. may not juſtify killing ſuch an aſſailant, as as if he had attempted to rob him: For is not he, who ts to murder me, more injurious than he who barely at- to rob me? and can it be more juſtifiable to fight for my than for my life? And is it not only highly agreeable to , than a man in ſuch circumſtances may lawfully kill ano- but it ſeems alſo to be confirmed by the general tenor of w-books, which ſpeaking of homicide *ſe defendendo*, ſup- it done in ſome quarrel or affray; from whence it ſeems able to conclude, that where the law judges a man guilty nicide *ſe defendendo*, there muſt be ſome precedent quarrel ich both parties always are, or at leaſt may juſtly be ſup- to have been, in ſome fault, ſo that the neceſſity, to which n is at length reduced to kill another, is in ſome meaſure med to have been owing to himſelf: For it cannot be ned, that the law, which is founded on the higheſt reaſon, adjudge a man to forfeit all his goods, and put him to the ity of purchaſing his pardon, without ſome appearance of lt. And though it may be ſaid, that there is none in e-medley, and yet that the party's goods are alſo forfeited at, I anſwer, that chance-medley may be intended to ed from ſome negligence, or at leaſt want of ſufficient on in the party, who is ſo unfortunate as to commit it, ſo he doth not ſeem to be altogether faultleſs. Beſides, one e reaſons given in our law books for which homicide *ſe dendo* forfeits goods, is becauſe thereby a true man is killed; t ſeems abſurd, that he who apparently attempts to murder her, which is the moſt heinous of all felonies, ſhould be med ſuch, when thoſe who attempt other felonies, which to be much leſs criminal, are allowed to be killed as right villains, not deſerving the protection or regard of the Bendlow 47. 1 And 41. Kely. 128, 129. 1 Hale 481, 484 Foſter 274. Crom. 27, 28. Dalt. c. 98. S. P. C. 15. 3 Inſt. 57. Vide F. Cor. 284, 286, 287. Bacon 33. S. P. C. 15. Dalt. c. 98,

25. However, perhaps in all theſe caſes, there ought e a diſtinction between an aſſault in the highway and an lt in a town. For in the firſt caſe it is ſaid, that the per- aſſaulted may juſtify killing the other without giving back ll; but that in the ſecond caſe, he ought to retreat as far e can without apparently hazarding his life, in reſpect of the bability of getting aſſiſtance. † And by 24 Hen. 8. c. 5. it is Foſter 288. N. Bendl. 47. Crom. 27, 28. Dalt. c. 98. Sum. 42. Foſter 273.

Puff. l. 2. c. 5. Bract. 155. 1 Hale 487. 1 And. 41. Kely. 51. Prin. P. L. 211. 26 Aſſ. 23.

is recited, "Foraſmuch as it hath been in queſtion and am-
ty, that if any evil diſpoſed perſon or perſons do attempt
ouſly to rob or murder any perſon or perſons in or nigh any co
high-way, cartway, horſeway, or foot-way, or in their ma
meſſuages, or dwelling places; or that felonioufly do atte
break open any dwelling houſe in the night-time, ſhould ha
in the proſecution of ſuch felonious intent, to be ſlain b
or them whom the ſaid evil doers ſhould ſo attempt to
murder, or by any perſon or perſons being in their dw
houſe, which the ſame evil doers ſhould ſo attempt burgar
break by night, if the ſaid perſon ſo happening in ſuch c
ſlay the offender ſo attempting to commit murder or burg
ſhould forfeit or loſe his goods or chattels for the ſame, a
other perſon ſhould do that by chance medley ſhould happe
kill another in his or their defence." For the declaration of w
ambiguity and doubt, it is enacted, "That whoever ſhall b
"dicted or appealed of or for the death of ſuch evil diſp
"perſon or perſons attempting to murder, rob, or burgar
"break manſion houſes as aforeſaid, ſhall not forfeit any
"tenements, goods or chattels, but ſhall be thereof, and for
"ſame fully acquitted and diſcharged." (1)

(1) Not only the maſter of a houſe, but a lodger or ſojourner who kills an affa
intending to commit murder or robery, is within the protection of this ſtatute, Cro.
544. But this reaches not to any crime unaccompanied with force, as picking of p
ets; or to the breaking open of any houſe in the day time, unleſs it carries with it a
tempt of robbery or arſon. 4 Comm 180. Vide 1 Hale 488. And although it i
higheſt poſſible invaſion of property, a man is not juſtifiable in killing another wha
taketh in adultry with his wife, for it favours more of ſudden revenge than of ſelf pr
vation; but this law hath been executed with great benignity. Ven. 159 Ray.
Prin. P. L. 212. If the huſband however, detect the raviſher in the attempt, the
calling for aſſiſtance, it is excuſable *ſe defendendo*. 1 Hale 486.

Dalt. c. 98. Bac. Elem. c. 5. 4 Comm. 187.

Sect. 26. Secondly, Alſo the killing of an innocent per
in the defence of a man's ſelf, is ſaid to be juſtifiable in ſ
ſpecial caſes, as, if two be ſhipwreck'd together, and on
them get upon a plank to ſave himſelf, and the other alſo, b
ing no other means to ſave his life, get upon the ſame pl
and finding it not able to ſupport them both, thruſt the o
from it, whereby he is drowned, it ſeems that he, who thus p
ſerves his own life at the expence of that of another, may ju
the fact by the inevitable neceſſity of the caſe.

C. Car. 538. March 5. 1 Hale 42, 43.

Sect. 27. If a man be awakened in the night with an al
that thieves are in his houſe, and ſearching for them in the d
with his ſword drawn, happen to kill a perſon, lying hid i
part of the houſe, who in truth had no ill deſign, and was bro
thither by a ſervant in order to aſſiſt in cleaning the houſe
ſeemeth that he may juſtify the fact, inaſmuch as it hath not
appearance of a fault.

CHA

HAPTER THE TWENTY-NINTH.

Of EXCUSABLE HOMICIDE.

XCUSABLE homicide is either *per infortunium*, or *se defendendo*.—In treating of which I ſhall firſt ſhew the nature ach of them diſtinctly, and then conſider thoſe properties ein they both agree. See 1 Hale 38, to 41, 393, 492.

ct. 1. And firſt of homicide *per infortunium*, or by miſadure, which is where a man in doing a lawful act (1), with- ny intent of hurt, unfortunately chances to kill another; Sum. 31. 1 Hale 472. St. Tr. 3301. Strange 462. Prin. P. L. 214.

) Whether the act muſt be ſtrictly lawful to bring the homicide within this deſcrip- Vide Foſ. 258, 259. 3 Inſt. 56.

ct. 2. As firſt, Where a labourer being at work with a het, the head thereof flies off, and kill one who ſtands 6 Ed. 4. 7. B. Cor. 59 148.

ct. 3. Secondly, Where a third perſon whips a horſe on ch a man is riding, whereupon he ſprings out, and runs r a child and kills him, in which caſe the rider is guilty of icide, *per infortunium*; and he who gave the blow, of manghter. Sum. 58, 59. 1 Hale 476. 4 Comm. 182.

ct. 4. Thirdly, Where a workman, having firſt given d warning to all perſons to ſtand clear, flings down a piece imber from a private houſe ſtanding out of the road, and reby kills one who happens to be underneath:—But if any ſon fling down ſuch a piece of timber idly in play, or even orkman fling it down in the ſtreets of a town, where the ger is apparent in reſpect of the number of people continually ing by, he is guilty of manſlaughter. 1 Hale 472 475 Kely. 40. Bract. l. 3. c. 4. Dalt. c. 96. Sum. 31. B. Cor. 229.

ct. 5. Fourthly, Where a ſchoolmaſter in correcting his olar, or a father his ſon, or a maſter his ſervant, or an oer in whipping a criminal condemned to ſuch puniſhment, haps to occaſion his death. Yet if ſuch perſons in their correc n be ſo barbarous, as to exceed all bounds of moderation, and reby cauſe the party's death, they are guilty of manſlaughter the leaſt (2), and if they make uſe of an inſtrument improper correction, and apparently endangering the party's life, as iron bar, or ſword, &c. or kick him to the ground, and en ſtamp on his belly and kill him, they are guilty of murr. 1 Hale 454, 473. 474. Bract. l. 1. c. 4. Sum. 31. Crom. 28. Dalt. c. 96. Keilw. 136. Skin. 668. Kely. 65. 5 Mod. 287, &c. Foſter 262.

(2) So when an officer of the impreſs ſervice fires at a boat in order to bring her to, d kills a man, it is impoſſible that the offender ſhould be made guilty of more than anſlaughter, eſpecially if he fires in the manner uſual upon ſuch occaſions. L. Mansld, Cowp. 832.

Sect. 6.

Keilw. 108. B. Cor. 148. Kely 41. Prin. P. L. 226. 3 Wilſ. 407.

Sect. 6. Fifthly, Where one lawfully uſing an innocent diverſion, as ſhooting at butts, or at a bird, *&c.* by the glance of an arrow, or ſuch like accident, kills another.

Keilw. 108, 136. Crom. 29. 11 H. 7. 23. Foſter 260.

Sect. 7. Sixthly, Where a perſon happens to kill another playing a match of foot-ball, wreſtling, or ſuch like ſports which are attended with no apparent danger of life, and intended for the trial, exerciſe and improvement, of the ſtrength, courage, and activity of the parties.

11 H. 7. 23. 3 Inſt. 160. 1 Hale 473. Keilw. 108, 136. Sum. 31. Dalt. c. 96. Hob. 134. Crom. 29. Con. B. Cor. 22 Foſter 261. (a) 9 St. Tr. 315.

Sect. 8. Seventhly, Where one kills another in fighting barriers or tilting by the king's command, which by the best opinion, ſecures him from being guilty of felony, by reaſon of any ſuch unfortunate accident.—† And under the 22 and 23 Car. 2. c. 25. and the 4 and 5 Will. and Mar. c. 23. made for the preſervation of game, where a ſtranger aſſiſting a game-keeper to ſeize nets even upon the ground of a third perſon, during the tranſaction, the gun of the ſtranger accidentally went off, by which one of the poachers is killed, this is only chance-medley, for the duty of the game-keeper will authoriſe the paſs of the ſtranger. (a)

Sum. 31, 32. 52, 57, 58. Cor. Hob. 134. Dalt. c. 98. Aleyn. 12. 1 Hale 472 473. Foſter 292. Strange 499. 6 St. Tr. 195. 4 Comm. 183.

Sect. 9. But if a perſon kill another by ſhooting at a mark, *&c.* in a third perſon's park, in the doing whereof he is a trespaſſer; or by ſhooting off a gun (3), or throwing ſtones in a street or highway, or other place where men uſually reſort; or by throwing ſtones at another wantonly in play, which is a dangerous ſport, and has not the leaſt appearance of any good intent; or by doing any other ſuch idle action as cannot but endanger the bodily hurt of ſome one or other; or by tilting or playing at handſword without the king's command; or by parrying with naked ſwords covered with buttons at the points, or with ſwords in the ſcabbards, or ſuch like raſh ſports, which cannot be uſed without the manifeſt hazard of life, he is guilty of manſlaughter.

(3) Therefore where the defendant came to town in a chaiſe, and before he got out of it he fired his piſtols, which by accident killed a woman, King, C. J. ruled it to be manſlaughter. Str. 481.

Kely. 117. 1 Hale 39. 475.

Sect. 10. And if a man happen to kill another in the execution of a malicious and deliberate purpoſe to do him a perſonal hurt by wounding or beating him; or in the wilful commiſſion of any unlawful act, which neceſſarily tends to raiſe tumults and quarrels, and conſequently cannot but be attended with the danger of perſonal hurt to ſome one or other; as by committing a riot, robbing a park, *&c.* he ſhall be adjudged guilty of murder,

3 Inſt. 56. Kely. 117. Sup. c. 27. ſ. 4. Sum. 52.

Sect. 11. And *a fortiori* he ſhall come under the ſame conſtruction, who in the purſuance of a deliberate intention to commit a felony, chances to kill a man, as by ſhooting at the fowl, with an intent to ſteal them, *&c.* for ſuch perſons are

means favoured, and they must at their peril take care of the sequence of their actions; and it is a general rule, That rever a man intending to commit one felony, happens to com- another, he is as much guilty as if he had intended the fe- which he actually commits. 1 Hale 475. 6 St. Tr. 222. Prin. P. L. 226.

ct. 12. Neither shall he be adjudged guilty of a less ne, who kills another, in doing such a wilful act, as shews to be as dangerous as a wild beast, and an enemy to mankind neral; as by going deliberately with a horse used to strike, ischarging a gun, among a multitude of people, or throw- a great stone or piece of timber from a house into a street, ugh which he knows that many are passing; and it is no ex- that he intended no harm to any one in particular, or that neant to do it only for sport, or to frighten the people, &c. 1 Hale 476. Sum. 32. 44. 3 Inst. 57. Dalt. c. 93. Foster 262. 11 H. 7. 23. a. B. Cor. 229. Dalt. c. 97.

ct. 13. And now I am to consider homicide *se defendendo*, ch seems to be where one, who has no other possible means reserving his life from one who cambats with him on a sud- quarrel, or of defending his person from one who attempts at him, (especially if such attempt be made upon him in his house,) kills the persons by whom he is reduced to such an itable necessity. Vide sup. c. 28. s. 23, 24. Sum. 40, 41. S. P. C. 15. 4 Comm. 184.

ct. 14. And not only he who on an assault retreats to a wall, ome such streight, beyond which he can go no farther, before ills the other, is judged by the law to act upon unavoidable ssity: but also he who being assaulted in such a manner, such a place, that he cannot go back without manifestly in- gering his life, kills the other without retreating at all. B. Cor. 125. 43 Ass. 31. 3 Inst. 56. Sum. 41. Kely. 128. Foster 273.

ct. 15. And notwithstanding a person who retreats from ssault to the wall, give the other wounds in his retreat, yet give him no mortal one, till he get thither, and then kill he is guilty of homicide *se defendendo* only. Sum. 41. Crom. 28. S. P. C. 15.

ct. 16. And an officer who kills one that resists him in the cution of his office, and even a private person, that kills one feloniously assaults him in the highway, may justify the fact out ever giving back at all. Sum, 41. 3 Inst. 56. Crom. 28. Ante 71. s. 18. 9 St. Tr. 335. Str. 499. 6 St. Tr. 195. Fost. 292.

ct. 17. According to some good opinions, even he who s another the first blow on a sudden quarrel, if he afterwards what he can to avoid killing him, is not guilty of felony. Yet a person seems to be too much favoured by this opinion, much as the necessity to which he is at last reduced, was at first so much owing to his own fault. And it is now agreed, if a man strike another upon malice prepense, and then fly e wall, and there kill him in his own defence, he is guilty urder. S. P. C. 15. Crom. 28. See 1 Hale 479, 480. Dalt. c. 98. Kely. 58. Sum. 42. Dalt. c. 98. Foster 276.

4 Comm. 186, 188.

Sect. 18. Thus far of each kind of excuſable homicide ſeparately conſidered.—And now I am to conſider thoſe properties wherein they both agree.

3 Inſt. 56.
2 Inſt. 149.
F. Cor. 136.
4 Comm. 182.

Sect. 19. And firſt it ſeems clear, That neither of theſe homicides are felonies, becauſe they are not accompanied with felonious intent, which is neceſſary in every felony.

11 H. 4. 93.
B. Cor. 80.
15 Aſſ. 7.
Poſt. f. 24.
Fof. 284, 285.

Sect. 20. And from hence it ſeems plainly to follow, That they were never puniſhably with loſs of life: and the ſame farther appears from the writ *de odio & atia*, by virtue whereof if any perſon committed for killing another, were found guilty of either of theſe homicides, and no other crime, he might be bailed; and indeed it ſeems to be againſt natural juſtice, to condemn a man to death, for what is owing rather to his misfortune than his fault.

2 Inſt. 56.
S. P. C. 16.
52 Hen. 3.
1 Hale 447.

Sect. 21. It is true indeed, that ſome of our beſt authors have argued from the ſtatute of *Marlebridge*, c. 26. which it acts, That, "*Murdrum de cætero non adjudicetur, ubi inventum tantummodo adjudicatum eſt, &c.*" That before this ſtatute homicides by miſadventure, or *ſe defendendo*, were adjudged murder, and conſequently puniſhed by death.

Bract. 134.
Kely. 121.
See 1 Hale 425. 448.

Sect. 22. But to this it may be anſwered, That murder in thoſe days, ſignified only the private killing of a man by one who was neither ſeen nor heard by any witneſs, for which the offender, if found, was to be tried by ordeal, and if he could not be found, the town in which the fact was done, was to be amerced ſixty-ſix marks, unleſs it could be proved that the perſon killed was an *Engliſhman*; for otherwiſe it was preſumed that he was a *Dane* or *Norman*, who in thoſe days were often privately made away with by the *Engliſh*. And it being a doubt whether homicide by miſadventure, &c. were to be eſteemed murder in this ſenſe, it ſeems to have been the chief intention of the makers of this ſtatute to ſettle this queſtion.

Bract. 135.

Sum. 98, 99.
2 Inſt. 315.
Dalt. c. 98.
1 Hale 477.

Sect. 23. Secondly, It is certain, however, That notwithſtanding neither of theſe offences be felonies, yet a perſon guilty of them is not bailable by juſtices of peace, but muſt be committed till the next coming of the juſtices of eyre or gaol-delivery.

Or they may be brought up by *habeas corpus*, and bailed.

Reg. 133.
2 Inſt. 42, 315.
9 Co. 56.
4 Inſt. 182.
Bract. 123.
Fleta b. 1. c. 25.
S. P. C. 77.
2 Inſt. 43, 315.

Sect. 24. Indeed anciently a perſon, committed for the death of a man might ſue out the writ *de odio & atia*, which by *magna charta*, c. 26. is grantable without fee; and thereon, by an inqueſt taken by the ſheriff, he were found to have done the fact by miſadventure, or *ſe defendendo*, he might be mainprized by twelve men, upon the writ *de pace ballium*. But ſuch writs and enquiries were taken away by the ſtatute of *Glouceſter*, c. 9, and 28 Edw. 3. c. 9. though perhaps they were again revived by 42 Edw. 3.

hich makes all ſtatutes contrary to *magna charta*, void; yet at
s day they ſeem to be obſolete, and indeed uſeleſs, inaſmuch
the party may probably be ſooner delivered in the uſual courſe,
the coming of the juſtices of goal-delivery.

9 Co. 56. Co. Bail and Mainp. c. 10. Foſter 285. and vide 31 Car. 2. c. 2.

Sect. 25. Thirdly, it is alſo agreed, That no one can ex-
ſe the killing another, by ſetting forth in a ſpecial plea, that
did it by miſadventure, or *ſe defendendo*, but that he muſt
ad Not guilty, and give the ſpecial matter in evidence. And
t wherever a perſon is found guilty of ſuch homicide either
on a ſpecial indictment for the ſame, or by a verdict ſetting
th the circumſtances of the caſe on a general indictment of
rder or homicide, he ſhall be diſcharged out of priſon upon
l and forfeit his goods: But that upon removing the record by
tiorari into chancery, he ſhall have his pardon of courſe,
hout ſtaying for any warrant from the king to that purpoſe,
hall be more fully ſhewn in the ſecond book. ch. 37. ſect. 1.

Ante c. 28. ſ. 3. 1 Hale 478. 4 H. 7. 2. Keilw. 53. 108. 2 Inſt. 316. S. P. C. 15, 16. F. Cor. 297, 354, 361. Dalt. c. 96, 98. F. N. B. 246. Foſter ch. 4.

CHAPTER THE THIRTIETH.

Of MANSLAUGHTER

HOMICIDE againſt the life of another, amounting to
felony, is either with or without malice.

Foſter c. 5. Diſ. 2d.

Sect. 1. That which is without malice is called manſlaugh-
or ſometimes chance-medley, by which we underſtand ſuch
ing as happens either on a ſudden quarrel, or in the commiſ-
of an unlawful act, without any deliberate intention of do-
any miſchief at all.

4 Com. 186, 191. Prin. P. L. 215, 219, 224. 3 Inſt. 55, 57. Dalt. c. 94. Sum. 56, 57. 1 Hale 466.

Sect. 2. And from hence it follows, That there can be no
eſſaries to this offence before the fact, becauſe it muſt be done
hout premeditation.

Sum. 217. b. 2. c. 29. ſ. 24.

Sect. 3. But the learning relating to this head, being for the
part co-incident with that of others, it will be ſuperfluous
large on it here; and therefore I ſhall refer the reader
ther chapters for the particular caſe; as to the following chap-
of murder from ſection 21 to 32. for thoſe concerning duel-
; and to the ſaid chapter, ſections, 47, 48, 49. and to chap-
8. ſections 14, 15. for ſuch as happen in a riot, &c. and
hapter 29 from ſection 6 to ſection 13. for ſuch as fall out
e execution of a raſh unlawful action.

Co. Lit. 127. Kely. 55. 135. 1 Hale 456.

Sect. 4. But there is a particular kind of manſlaughter
er to be conſidered here, from which the benefit of the
gy is taken away by 1 *Jac.* 1. c 8. "Where any per-

" ſon ſhall ſtab or thruſt any perſon or perſons that hath not then
" any weapon drawn, or that hath not then firſt ſtricken, the
" party which ſhall ſo ſtab or thruſt, ſo as the perſon or per-
" ſons ſo ſtabbed or thruſt, ſhall thereof die within the ſpace of
" ſix months then next following, although it cannot be proved
" that the ſame was done of malice forethought." (1)

(1) This act is continued by 17 Car. 1. c. 4. "till ſome other act ſhall be made touching the continuance or diſcontinuance thereof."—For the reaſons and occaſion upon which it was paſſed, vide 4 Com. 193. Foſt. 297. L. Ray. 140. 845. 7 Mod. 133. Skin. 66

1 Bulſt. 87. Kely. 55. 1 Hale 456. Foſ. 298.

Sect. 5. It is generally holden that this ſtatute is but declarative of the common law, and in the conſtruction thereof, the following points have been reſolved.

1 Jon. 340. Vide Skin. 668. where Lord Holt queſtions Bryant's caſe.

Sect. 6. Firſt, That wherever a perſon who happens to kill another was ſtruck by him in the quarrel before he gave the mortal wound, he is out of the ſtatute though he himſelf gave the firſt blow.

Sum. 58. 1 Hale 468. 2 Hale 344. See b. 2. c. 33. ſ. 98. Styles 86. Salk. 542, 543. Prin. P. L. 232. Foſt. 301. Alleyn 44.

Sect. 7. Secondly, That he only who actually gives the ſtroke, and not any of thoſe who may be ſaid to do it by conſtruction of law, as being preſent, and aiding and abetting the fact, are within the ſtatute: from whence it follows, That if it cannot be proved by whom the ſtroke was given, none can be found guilty within the ſtatute.

1 Jones 432. confirmed by Holt in Mawgridge's caſe, Kely. 131, Skin. 668. 3 Lev. 266, 255.

Sect. 8. Thirdly, That the killing of a man with a hammer or ſuch like inſtrument, which cannot come properly under the words thruſt, or ſtab, is not a killing within the ſtatute.—But it ſeems that the diſcharging a piſtol, or throwing a pot, or other dangerous weapon at the party, is within the equity of the words, " having a weapon drawn ;" for penal ſtatutes are conſtrued ſtrictly againſt the ſubject, and favourably and equitably for him.

Sect. 9. Fourthly, That there is no need to lay the concluſion of the indictment *contra formam ſtatuti*, becauſe the ſtatute makes no new offence, but only takes away the privilege of the clergy from an old one, and leaves it to the judgment of the common law; from whence it follows, That a perſon indicted on the ſtatute, may be found guilty of manſlaughter generally. Alſo from the ſame ground it hath been reſolved, That though both an indictment lay, and a verdict alſo find, a fact to be *contra formam ſtatuti*, which cannot poſſibly be ſo, as that A. and B. aided and abetted *C. contra formam ſtatuti*, yet neither ſuch indictment nor verdict are void, but A. and B. ſhall be dealt with in the ſame manner as they ſhould have been, if thoſe words *contra formam ſtatuti* had been wholly omitted, becauſe the ſubſtance of the indictment being found, the reſt may be rejected as ſurplus and ſenſeleſs: And, *a fortiori*, therefore it is certain that they ſhall do no hurt to an indict-

See b. 2. c. 25. ſ. 117. Sum. 58. 266. Alleyn 47.

Cro. Jac. 282.

ment or verdict containing a fact which may be within the ute.

Sect. 10. Fifthly, How far the words *contra formam ſtatuti*, pply a defect in an indictment, which does not ſpecially purſue ſtatute, ſee the ſecond book, chapter 25. ſection 116. See 1 Hale 467 to 470.

A PRISONER whoſe caſe may be brought within this ſtatute is commonly arraigned upon o indictments, one at common law for murder, and the other upon the ſtatute Foſ. . But the ſame circumſtances which at common law will ſerve to juſtify, excuſe, or viate in a charge of murder, have always had their due weight in proſecutions grounded on this ſtatute. Foſ. 298. As where a huſband ſtabs an adulterer whom he ſeizes in act. 1 Vent. 158. Raym. 212. Or where a man is aſſaulted by thieves in his houſe, thieves having no weapon drawn, nor having ſtruck him; and he ſtabs one of them. . 469. Or where an officer entering violently into the chamber of a gentleman to eſt him, but without announcing the purpoſe for which he came, is ſtabbed by the tleman with his ſword. Kely. 136. 1 Hale 470. Styles 467. Or where upon an -cry of thieves, a perſon who had innocently hidden himſelf in a cloſet, was miſtaken the thief and ſtabbed in the dark. 1 Hale 42. 474. C. Car. 538. W. Jones 429. y. 136. and many other inſtances of theſe kinds which have been held not within the ute.

CHAPTER THE THIRTY-FIRST.

OF MURDER.

HOMICIDE againſt the life of another, amounting to felony with malice, is either murder or petit treaſon.

Sect. 1. And firſt of murder, which anciently ſignified only private killing of a man, for which by force of a law intro- ced by king *Canutus* for the preſervation of his *Danes*, the n or hundred where the fact was done, was to be amerced (a) he king, unleſs they could prove that the perſon ſlain were an *gliſhman*, (which proof was called *Engleſchire*), or could pro- e the offender, &c. And in thoſe days, the open wilful kill- of a man through anger or malice, &c. was not called mur- , but voluntary homicide.

Dialog. de Scacch. l. 1. c. 10. *Stiern. jure Suco.* l. 3. c. 3. Glanv. l. 14. c. 3. Foſter 281. Stat. Malbr. c. 26. Prin. P. L. 233. Bract. 134, 135. Kely. 121. &c. 1 Hale c. 447. Ang. Sax. 280.

Bract. 121. (a) The amerciament was 46 marks. Wilk.

Sect. 2. But the ſaid law concerning *Engleſchire*, having been liſhed by 14 Edw. 3. c. 4. the killing of any *Engliſhman* or eigner through malice prepenſe, whether committed openly or retly, was by degrees called murder; and 13 *Rich.* 2. c. 1. ich reſtrain's the king's pardon in certain caſes, does in the amble, under the general name of murder, include all ſuch nicide as ſhall not be pardoned without ſpecial words; and in body of the act expreſſes the ſame by murder, or killing by it, aſſault, or malice prepenſed. And doubtleſs the makers 23 *Hen.* 8. c. 1. which excluded all wilful murder of malice penſe from the benefit of the clergy, intended to include open, well as private, homicide within the word murder.

S. P. C. 18. 19. 1 Hale 448.

Sect. 3.

Stamf. l. 1. c. 10. 1 Hale 450. 3 Inſt. 47.

Sect. 3. By murder therefore at this day we underſtand the wilful killing of any ſubject whatſoever, through malice fore-thought, whether the perſon ſlain be an *Engliſhman* or foreigner.

And for the better underſtanding hereof, I ſhall examine the following particulars:—Firſt, in what caſes a man may be ſaid to kill another. Secondly, In what places ſuch killing is within the cognizance of the law. Thirdly, Who are ſuch perſons the killing of whom a man may commit murder. Fourthly, What killing ſhall be adjudged to be malice prepenſe, or murder.

4 Comm. 196. 1 Hale 425, 432. 3 Inſt. 48, 91. Sum. 53. Palm. 548. 1 Inſt. 295. 2 Hawk. c. 29, 31. 9 St. Tr. 146 to 251.

Sect. 4. As to the firſt point, viz. In what caſes a man may be ſaid to kill another; not only he who by a wound or blow, or by poiſoning, ſtrangling, or famiſhing, &c. directly cauſes another's death, but alſo in many caſes, he who by wilfully or deliberately doing a thing which apparently endangers another's life, thereby occaſions his death, ſhall be adjudged to kill him.

Crom. 24, 90. Pult. 122. Dalt. c. 93. 1 Hale 431, 432.

Sect. 5. And ſuch was the caſe of him who carried his father againſt his will, in a cold froſty ſeaſon, from one town to another, by reaſon whereof he died.

Crom. 24. Dalt c. 93. 1 Hale 432.

Sect. 6. Such alſo was the caſe of the harlot, who being delivered of a child, left it in an orchard covered only with leaves, in which condition it was ſtruck by a kite, and died thereof.

(a) S. P. C. 36. c. 3 Inſt. 91. Vide 14 Edw. 3. c. 10. (b) Dalt. c. 93. Sup. c. 1. ſ. 7. 1 Hale 431, 436. 442, 467. (c) Plowd. 474.

Sect. 7. And in ſome caſes a man ſhall be ſaid, in the judgment of the law, to kill one who is in truth actually killed by another, or by himſelf; as where one by dureſs (a) of imprisonment compels a man to accuſe an innocent perſon who on that evidence is condemned and executed; or where one incites a (b) madman to kill himſelf or another; or where one lays (c) poiſon with an intent to kill one man, which is afterwards accidentally taken by another, who dies thereof.

9 Co. 81. 1 Hale 430, 431, 617. F. Cor. 311. S. P. C. 17. Crom. 24. Dalt. c. 93. Pult. 122. Sum. 53. Exodus c. 21. v. 29. L. Raym. 143. Prin. P. L. 236.

Sect. 8. Alſo he who wilfully neglects to prevent a miſchief which he may, and ought to provide againſt, is, as ſome have ſaid, in judgment of the law, the actual cauſe of the damage which inſues; and therefore if a man have an ox or horſe which he knows to be miſchievous, by being uſed to gore or ſtrike at thoſe who come near him, and do not tie them up, but leave them to their liberty, and they afterwards kill a man, according to ſome opinions, the owner may be indicted, as having himſelf feloniouſly killed him; and this is agreeable to the *Moſaical* law. However, as it is agreed by all, ſuch a perſon is certainly guilty of a very groſs miſdemeanour.

Sect.

Sect. 9. Alſo it is agreed, That no perſon ſhall be adjudged any act whatever to kill another, who doth not die thereof hin a year and a day after; in the computation whereof the ole day on which the hurt was done ſhall be reckoned the t. Sum. 55. Pult. 123. Dalt. c. 93. S. P. C. 21.

Sect. 10. But if a perſon hurt by another, die thereof with- a year and a day, it is no excuſe for the other that he might ve recovered, if he had not neglected to take care of him- f. 3 Inſt. 53. Kely. 26. 1 Keb. 17. 1 Hale 428. Prin. P. L. 234.

A goaler, knowing a priſoner to be infected with an epidemick diſtemper, confines other priſoner againſt his will, in the ſame room with him, by which he catches the ection, of which the goaler had notice, and the priſoner dies; this is a felonious killing, a. 856. 9 St. Tr. 146. So, to confine a priſoner in a low damp unwholeſome room, allowing him the common conveniencies which the decencies of nature require, by ich the habits of his conſtitution are ſo affected as to produce a diſtemper of which dies; this alſo is felonious homicide. Stra. 884. Ld. Raym. 1578.—For although law inveſts goalers with all neceſſary powers for the intereſt of the commonwealth, y are not to behave with the leaſt degree of wanton cruelty to their priſoners. O. B. 84. p. 1177. And theſe were deliberate acts of cruelty, and enormous violations of truſt the law repoſeth in its miniſters of juſtice. Foſter 322.

So alſo, any one who aſſuming to take care of another, refuſes the neceſſary ſubſiſtence; by any other ſeverity though not of a nature to produce immediate death, as by putt- the party in ſuch a ſituation as may poſſibly be dangerous to life or health, if death ually and clearly enſues in conſequence of it, it is murder.—And this mode of killing of the moſt aggravated kind, becauſe a long time muſt unavoidably intervene before death can happen, and alſo many opportunities of deliberation and reflection. O. B. 84. p. 455. and Rex. v. S. Self. O. B. Feb. Seſſ. 1776.

So alſo, by the old common law, to bear falſe witneſs, and with expreſs premeditation, this means to take away the life of another, was held to be murder. Mirr. c. 1. ſ. 19. it. c. 5. Bract. l. 3. c. 4. But it is ſaid, that this enormous crime can hardly be ſo nſidered at this day. 3 Inſt. 48. The authority, however, for this opinion, in Foſter 1. is ſaid by no means abſolutely to warrant the concluſion. 4 Comm. 196.

Sect. 11. As to the ſecond point, *viz.* In what places ſuch lling is within the conuſance of the law. It ſeems, That the lling of one who is both wounded and dies out of the realm, wounded out of the realm and dies here, cannot be deter- ned at common law, becauſe it cannot be tried by a jury of e neighbourhood where the fact was done. But it is agreed, hat the death of one who is both wounded and dies beyond ſea; d it is ſaid by ſome, That the death of him who dies here of wound given there, may be heard and determined before the nſtable and marſhal, according to the civil law, if the king eaſe to appoint a conſtable. And it ſeemeth alſo to be clear, hat ſuch a fact being examined by the privy council, may by rce of 33 Hen. 8. c. 23. be tried, in relation to the principal fenders, but not as to the acceſſaries, before commiſſioners ap- inted by the king in any county in *England*. 3 Inſt. 48. 1 Hale 426. 2 Inſt. 51. Co. Lit. 75. S. P. C. 65. B. App. 153. C. Car. 247. b. 2. c. 23. ſ. 12. 3 Keb. 785. Con. 3 Keb. 715. 1 And. 195.

Sect. 12. A murder at ſea was anciently cognizable only the civil law, but now by force of 27 Hen. 8. c. 4. and Hen. 8. c. 15. it may be tried and determined before the k n g's 3 Inſt. 48, 49.

king's commiſſioners (1) in any county of England according to the courſe of the common law. Yet the killing of one who died at land of a wound received at ſea, is neither determinable by common law, nor by force of either of theſe ſtatutes: but it ſeems, that it may be tried by the conſtable and marſhal, or before commiſſioners appointed, in purſuance of the aforeſaid ſtatute of 33 Hen. 8. c. 23.

1 Leon. 270. Sum. 54. 3 Inſt. 48. Vide 4 Black. Rep. 459.

(1) Namely, the admiral or his deputy and three or four more (among whom two common law judges are conſtantly appointed, who in effect try all the priſoners) the indictment being firſt found by a grand jury of twelve men, and afterwards tried by another jury. This is now the only method of trying marine felonies in the court of admiralty. The judge of the admiralty ſtill preſiding therein, juſt as the lord mayor preſides at the Seſſions in London. 4 Comm. 266.

† And for preventing any failure of juſtice, and for taking away all doubts touching the trial of murders in the caſes hereinafter mentioned, it is enacted by the 2 Geo. 2. c. 21. "That "where any perſon ſhall be feloniouſly ſtricken or poiſoned upon the ſea, or at any place out of *England*, and ſhall die of "the ſame ſtroke or poiſoning within *England*;—or where any "perſon ſhall be feloniouſly ſtricken or poiſoned at any place within "in *England*, and ſhall die of the ſame ſtroke or poiſoning upon the ſea, or at any place out of *England*; an indictment "thereof found by the jurors of the county of *England* in which "ſuch death, ſtroke, or poiſoning ſhall happen reſpectively as "aforeſaid, whether before the coroner upon the view of the "dead body; or before the juſtices of the peace, or other juſtices or commiſſioners who ſhall have authority to enquire of "murders, ſhall be as good and effectual in law as well againſt "the principals and acceſſaries as if ſuch felonious ſtroke and "death, or poiſoning and death, and the offence of ſuch acceſſaries had happened in the ſame county where ſuch indictment "ſhall be found; and the juſtices of goal delivery and oyer and "terminer in the ſame county; and alſo any ſuperior court "in caſe ſuch indictment ſhall be removed, &c. ſhall and may "proceed upon the ſame in all points, as they might or ought "to do in caſe ſuch ſtroke, poiſoning or death, &c. had happened in the ſame county where ſuch indictment ſhall be "found."

Sect. 13. It is ſaid by ſome, That the death of one who died in one county, of the wound given in another, was not indictable at all at common law, becauſe the offence was not compleat in either county, and the jury could enquire only of what happened in their own county. But it hath been holden by others, That if the corps were carried into the county where the ſtroke was given, the whole might be enquired of by a jury of the ſame county: And it is agreed, That an appeal might be brought in either county, and the fact tried by a jury returned jointly from each: And at this day, by ſtatute

3 Inſt. 48, 49. 1 Hale 426 B. Cor. 140, 141, 143. Indict. 13, 45. S. P. C. 90. 6 H. 7. 10. Finch. 411. S. P. C. 182. c. 45 Aſſ. 9. B. App. 3. 80, 83, 85, 149.

nd 3 Edw. 6. c. 24. the whole is triable by a jury of the where the death ſhall happen, on an indictment found, or brought, in the ſame county.

. 14. Alſo by force of 26 Hen. 8. c. 6. a murder in may be enquired of in an adjoining Engliſh county. ppeals muſt ſtill be brought in the proper county.

B. 2. c. 25. f. 39, 40. C. Car. 247, 498, 533.

255. 1 Lev. 118. Latch. 12, 118. 3 Inſt. 50. 8 Mod. 136, 146. Stra. 502. 6 Mod. 147. Vaugh. 413. Sid. 179. Keb. 621, 663, 677. Wilſ. 320. Atk. 82. Vent. 93.

. 15. As to the third point, *viz.* Who are ſuch per- by killing of whom a man may commit murder. It is d, that the malicious killing of any perſon, whatſoever or religion he be of, or of whatſoever crime attainted, rder.

. 16. And it was anciently holden, That the cauſing of portion, by giving a potion to, or ſtriking, a woman big child, was murder. But at this day, it is ſaid to be a miſpriſion only, and not murder, unleſs the child be born and die thereof, in which caſe it ſeems clearly to be mur- notwithſtanding ſome opinions to the contrary (a). And in eſpect alſo, the common law ſeems to be agreeable to the *cal*, which as to this purpoſe is thus expreſſed, "If men ve and hurt a woman with child, ſo that her fruit depart m her, and yet no miſchief follow, he ſhall be ſurely pu- ted, according as the woman's huſband will lay upon him, d he ſhall pay as the judges determine; and if any miſchief low, then thou ſhalt give life for life."

Bract. 121. S. P. C. 21. B. Cor. 91. Sum. 53. F. Cor. 146. 183, 263. (a) Vide 1 Hale 433. 23 Aſſ. 94. b. 2. c. 29. f. 18. 3 Inſt. 50. 3 Aſſ. 2. B. Cor. 68. Dalt. c. 93. Exodus c. 21. v. 22, 23.

. 17. It ſeems alſo agreed, That where one counſels a n to kill her child when it ſhall be born, who afterwards kill it in purſuance of ſuch advice, he is an acceſſary to the er. † But in the caſe of the murder of baſtard children e unnatural mother, it is difficult to prove that the child orn alive; and it is therefore enacted by 21 Jac. 1. c. 27. perpetual by 16. Car. 1. c. 4. "That if any woman be livered of any iſſue of her body, male or female, which ng born alive, ſhould by the laws of this realm be a baſ- d, and ſhe endeavoured privately, either by drowning or ret burying thereof, or any other way, either by herſelf, the procuring of others, ſo to conceal the death thereof, that it may not come to light, whether it were born alive nor, but be concealed, except ſuch mother can prove by witneſs that ſuch child was born dead, ſhe ſhall ſuffer th as in caſe of murder."

Dyer 186. 1 Hale 433, 429. 3 Inſt. 51. Kely. 127. 4 Comm. 198. Barring. 425. Prin. P. L. 16. O. B. 1784. p. 1223.

. 18. As to the fourth point, *viz.* What killing ſhall judged of malice prepenſe or murder. It is to be ob- d, That any formed deſign of doing miſchief, may be called

Foſt. 256, 257. Kely. 130. 1 Hale 451 to 454.

called malice; and therefore that not ſuch killing only proceeds from premeditated hatred or revenge againſt perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice prepenſe, and conſequently murder.

Kely. 129, 130. 1 Hale 455, &c. 9 St. Tr. 715. Prin. P. L. 236.

Sect. 19. And according to this notion, I ſhall conſider, First, Such murder as is occaſioned through an expreſs purpoſe to do ſome perſonal injury to him, who is ſlain in particular, which ſeems to be moſt properly called expreſs malice. Secondly, Such as happens in the execution of an unlawful action, principally intended for ſome other purpoſe, and not to do a perſonal injury to him in particular who is ſlain, in which caſe the malice ſeems to be moſt properly ſaid to be implied.

Sect. 20. As to murder in the firſt ſenſe, ſuch acts as ſhew a direct and deliberate intent to kill another, as poiſoning, ſtabbing, and ſuch like, are ſo clearly murder, that I ſhall not any queſtions relating thereto worth explaining.

But the caſes which have borne diſpute, have generally happened in the following inſtances—First, In duelling.—Secondly, In killing another without any provocation, or upon a ſlight one.—Thirdly, In killing one whom the perſon killing intended to hurt in a leſs degree.

Bulſt. 86, 87. Kely. 129. 10 St. Tr. 139. (a) 2 Bulſt. 147. Crom. 22. (b) 1 Roll. 360. 3 Bulſt. 171. Sum. 48. 1 Hale 452, 453. O. B. 1784. N° 776.

Sect. 21. As to the firſt inſtance of this kind, it is agreed, that wherever two perſons in cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder, and cannot help himſelf by alledging that he was (a) firſt ſtruck by the deceaſed; or that he often (b) declined to meet him, and was prevailed upon to do it by his importunity; or that it was his only intent to vindicate his reputation; or that he meant not to kill, but only diſarm, his adverſary: For ſince he deliberately engaged in an act highly unlawful, in defiance of the laws, he muſt at his peril abide the conſequences thereof.

3 Inſt. 51. Sum. 48. Kely. 56. 1 Lev. 80. Foſter 297. Oneby's caſe, 9 St. Tr. 22.

Sect. 22. And from hence it clearly follows, That if two perſons quarrel over night, and oppoint to fight the next day, or quarrel in the morning, and agree to fight in the afternoon; or ſuch a conſiderable time after, by which, in common intendment, it muſt be preſumed that the blood was cooled, and then they meet and fight, and one kill the other, he is guilty of murder.

Sect.

. 23. And wherever it appears from the whole circum- Kely. 56. 27.
s of the caſe, That he who kills another on a ſudden quar- 1 Sid. 177.
was maſter of his temper at the time, he is guilty of mur- Foſter 297.
as if after the quarrel he fall into other diſcourſe, and Strange 773.
calmly thereon; or perhaps if he have ſo much conſide- Ld. Ray. 1489, 1493.
, as to ſay, that the place wherein the quarrel happens
convenient for fighting; or that if he ſhould fight at pre- 1 Lev. 180.
he ſhould have the diſadvantage by reaſon of the height
ſhoes, &c.

. 24. And if A. on a quarrel with B. tell him that he
ot ſtrike him, but that he will give B. a pot of ale to ſtrike
and thereupon B. ſtrike, and A. kill him, he is guilty of
er, for he ſhall not elude the juſtice of the law by ſuch Sum. 48.
nce to cover his malice.

. 25. In like manner if B. challenge A. and A. re-
o meet him, but in order to evade the law, tell B. that
all go the next day to ſuch a town about his buſineſs,
ccordingly B. meet him the next day in the road to the 1 Hale 453.
town, and aſſault him, whereupon they fight, and A. Con Crom. 22,
B. he ſeems guilty of murder, unleſs it appear by the and Sum. 48.
circumſtances that he gave B. ſuch information acci-
lly, and not with a deſign to give him an opportunity
ting.

. 26. And at this day it ſeems to be ſettled, That if a Crom. 22.
aſſault another with malice prepenſe, and after be driven Dalt. 93.
im to the wall, and kill him there in his own defence, Sum. 47.
guilty of murder, in reſpect of his firſt intent. Kely. 58, 129.

. 27. And it hath been adjudged, That even upon a
n quarrel, if a man be ſo far provoked by any bare words
ſtures of another, as to make a puſh at him with a ſword, Crom. 23.
rike at him with any other ſuch weapon as manifeſtly en- Dalt. c. 93.
ers his life, before the other's ſword is drawn, and there- Kely. 61. 131.
a fight enſue, and he who made ſuch aſſault kill the other, Ld. Ray. 1489.
guilty of murder; becauſe that by aſſaulting the other 9 St. Tr. 62.
ch an outrageous manner, without giving him an oppor-
to defend himſelf, he ſhewed that he intended not to
with him, but to kill him, which violent revenge is no
excuſed by ſuch a ſlight provocation, than if there had
none at all.

. 28. But it is ſaid, That if he who draws upon ano- Kely. 55, 61,
in a ſudden quarrel, make no paſs at him till his ſword 131.
awn, and then fight with him, and kill him, he is guilty Ld. Ray. 1493.
anſlaughter only, becauſe that by neglecting the oppor- 10 St. Tr. 518.
y of killing the other before he was on his guard, and in Foſter 297
dition to defend himſelf, with a like hazard to both, he 2 Roll 461.
ed that his intent was not ſo much to kill, as to combat
the other, in compliance with thoſe common notions of
ur, which prevailing over reaſon, during the time that

a

a man is under the tranſports of a ſudden paſſion, ſo far as to extenuate his offence in fighting, that it ſhall not be adjudged to proceed of malice prepenſe.

Sum. 48. 3 Inſt. 51. 1 Hale 453. 3 Bulſt. 17.

Sect. 29. And if two happen to fall out upon a ſudden occaſion, and preſently agree to fight, and each of them fetch a weapon, and go into the field and there one kill the other, he is guilty of manſlaughter only, becauſe he did it in the heat of blood.

1 Hale 452. Crom. 23. Dalt. c. 93. Sum. 49. 1 Roll 360. 3 Bulſt. 171.

Sect. 30. And ſuch an indulgence is ſhewn to the frailty of human nature, That where two perſons who have formerly fought on malice, are afterwards to all appearance reconciled, and fight again on a freſh quarrel, it ſhall not be preſumed that they were moved by the old grudge, unleſs it appear by the whole circumſtances of the fact.

Sum. 51. Dalt. c. 93. 1 Freem. 514, O. B. 1784 p. 1043. 1 Hale 443. Sum. 51. 11 St. Tr. 114. Prin. P. L. c. 19.

Sect. 31. But the law ſo far abhors all duelling in cold blood, That not only the principal who actually kills the other, but alſo his ſeconds are guilty of murder, whether they fought or not; and ſome have gone ſo far as to hold, that the ſeconds of the perſon killed are alſo equally guilty, in regard to that countenance which they give to their principals in the execution of their purpoſe, by accompanying them there, and being ready to bear a part with them: But ſome have thought this rather too ſevere a conſtruction to make a man by ſuch reaſoning the murderer of his friend, to whom he was ſo far from intending any miſchief, that he was ready to hazard his own life in his quarrel.

Foſter 255. Ld. Ray. 1493. Kely. 27. Strange 773.

Sect. 32. And now I am to conſider the ſecond inſtance of this kind, viz. ſuch murder as happens in killing another without any provocation, or but upon a ſlight one; as to which it is to be obſerved, that wherever it appears that a man killed another, it ſhall be intended, *prima facie*, that he did it maliciouſly, unleſs he can make out the contrary by ſhewing that he did it on a ſudden provocation, &c.

Cro. Eliz. 694. Ld. Ray 144. 2 Inſt. 557. (a) Kely. 135. 1 Hale 455, 456, 473. 2 Roll. 460, 461. (b) Kely, 131. &c. Dalt. c. 93. (c) C. Eliz. 779. Noy 171. 1 Sid. 277. 1 Lev. 180.

Sect. 33. Alſo it ſeems to be agreed, That no (a) breach of a man's word or promiſe, no treſpaſs either to (b) lands or goods, no affront by bare (c) words or geſtures however ill or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch aſſault, whether the perſon ſlain did at all fight in his defence or not; for ſo baſe and cruel a revenge cannot have too ſevere a conſtruction.

Hob. 121. Con. 1 Jon. 432. Kely. 55, 61, 131. C. Jac. 296. 12 Co. 87, O. B. 1784 p. 19. Foſter 316. 5 St. Tr. 296. 7 St. Tr. 422. Styles 467.

Vide Foſ. 295. 1 Hale 456.

Sect. 34. But if a perſon ſo provoked had beaten the other only in ſuch a manner, that it might plainly appear that

ot to kill, but only chaſtiſe him; or if he had reſtrained till the other had put himſelf on his guard, and then in with him had killed him, he had been guilty of man-er only.

35. And of the like offence ſhall he be adjudged who ſeeing two perſons fighting together on a private quar-nether ſudden or malicious, takes part with one of them, ls the other,

36. Neither can he be thought guilty of a greater who (a) finding a man in bed with his wife, or being ac-(b) ſtruck by him, or pulled by the noſe, or filliped up-forehead, immediately kills him; or, (c) who happens another in a contention for the wall; or (d) in the de-f his perſon from an unlawful arreſt; or (e) in the de-f his houſe from thoſe who claiming a title to it attempt y to enter it, and to that purpoſe ſhoot at it, &c. or in defence of his poſſeſſion of a room in a publick houſe, from who attempt to turn him out of it, and thereupon draw words upon him; in which caſe the killing the aſſailant een holden by ſome to be juſtifiable: But it is certain, t can amount to no more than manſlaughter.

(a) Kely 137. 1 Vent. 158. Raym. 212. 2 Keb. 829. (b) Kely. 135. 3 Mod. 68. (c) Sum. 57. 3 Inſt. 55. (d) Kely. 137. 1 Hale 457. (e) Sum. 57. Crom. 27. 1 Hale 445. (f) Kely. 51. Prin. P. L. 225.

. 37. Nor was he judged criminal in a higher degree, eeing his ſon's noſe bloody, and being told by him, That d been beaten by ſuch a boy, ran three quarters of a mile, ving found the boy, beat him with a ſmall cudgel, where-afterwards died. (1)

Sum. 48. C. Jac. 296. 12 Co. 87. 1 Vent. 159. 1 Hale 453. Godb. 182. Ld Raym. 1498. and Foſt. 294, 295.

(1) Nor, was he thought more criminal, who, duped and encouraged by a concourſe ople, threw a pickpocket into a pond, adjoining to the road, in order to avenge the by ducking him, but without any apparent intention to take away his life, and the ocket was drowned; for although this mode of puniſhment is highly injuſtifiable and , yet the law reſpects the infirmities and imbecilities of human nature where cer-provocations are given. O. B. 1785. No. 751.—So alſo where three Scotch ſoldiers drinking together in a public houſe, one of them ſtruck ſome ſtrangers who were ng in another box with a ſmall rattan; they having uſed ſeveral opprobrious epithets, eviled the character of the Scotch nation. An altercation enſued, and one of the ers laid hold of the ſoldier who had ſtricken, and threw him againſt a ſettle. The ation increaſed, and, when the ſoldier had paid the reckoning, the ſtranger again d him from the room into the paſſage. Upon this the ſoldier exclaimed, that "he not mind killing an Engliſhman more than eating a meſs of crowdy." The ger, aſſiſted by another perſon, then violently puſhed the ſoldier out of the houſe, upon the ſoldier inſtantly turned round, drew his ſword, and ſtabbed the ſtranger heart. This was adjudged manſlaughter. Lord Mansfield, 5 Burr, 2799. Vide he King v. Snow, tried before Mr. Juſtice Willes, Sum. Aſſ. Northampton. 1786, ex. v. John Brown for the murder of J. Maccaſter, June 1776 But in theſe, and d in every other caſe of homicide upon provocation how great ſoever it be, if there ufficient time for paſſion to ſubſide, and for reaſon to interpoſe, ſuch homicide will urder, Foſt. 278, 296. 1 Hale, 486. 1 Ven. 158. Ray. 212.

B. 38. And now we are come to the third inſtance of kind, *viz.* Such murder as happens in killing one whom perſon killing intended to hurt in a leſs degree; as to h it is to be obſerved, That wherever a perſon in cool

Kely. 61, 131. Vide Mary Hazel's caſe. Sum. 49 to 52. O. B. 1785, P. 997. Jones 198. Palm. 585. Str. 771. Ld. Ray. 1489, 1493.

blood,

blood, by way of revenge, unlawfully and deliberately another in such a manner, that he afterwards dies thereof, guilty of murder, however unwilling he might have have gone so far.

C. Car. 131. W. Jon. 198. Palm. 545. Kely. 127. Sum. 49. 1 Hale 454. Foster 292.

Sect. 39. Also it seems, That he, who upon a sudden provocation, executeth his revenge in such a cruel manner, as a cruel and deliberate intent to do mischief, is guilty of mu if death ensue; as where the keeper of a park, finding stealing wood, tied him to a horse's tail and beat *him*, wher the horse ran away and killed him.

Prin. P. L. 226.

Sect. 40. AND now I am consider the second general h of this head, *viz.* In what cases such killing shall be adj murder which happens in the execution of an unlawful a principally intended for some other purpose, and not to do t sonal injury to him in particular who happens to be slain.

And this I shall consider in the following instances:—I Where the principal intention is to commit another felo Secondly, Where the principal design is to commit a bare br of the peace, not intended against the person of him who pens to be slain.—Thirdly, Where the chief motive is to a third person.—Fourthly, Where the direct design is to e from an arrest.—Fifthly, Where the principal purpose is to an illegal authority.—Sixthly, Where no mischief is intend all.

1 Hale 465, 474. Sum. 50. Kely. 117. Prin. P. L. 225. Sum. 46, 50. Dalt. c. 93. Moor 87. Plow. 101.

Sect. 41. As to the first particular, *viz.* Such killing as h pens in the execution of an unlawful action, whereof the p cipal intention was to commit another felony. It seems agr That wherever a man happens to kill another in the execu of a deliberate purpose to commit any felony, he is guilt murder; as where a person shooting at tame fowl, with an tent to steal them, accidentally kills a man; or where one upon a man to rob him; and kills him in making resistance; where a person shooting at, or fighting with one man, with a sign to murder him, misses him and kills another.

Plow. 474. 3 Inst. 51. 1 Hale, 436, 441, 467. 9 Co. 81.

Sect. 42. And not only in such cases where the very of a person having such a felonious intent, is the immed cause of a third person's death, but also where it any occasionally causes such a misfortune, it makes him guilty murder; and such was the case of the husband, who gav poisoned apple to his wife, who eat not enough of it to her, but innocently, and against the husband's will and p suation, gave part of to a child who died thereof; such was the case of the wife, who mixed ratsbane in a potion by an apothecary to her husband, which did not kill him, afterwards killed the apothecary, who to vindicate his rep tion tasted it himself, having first stirred it about. Neither

rial in this caſe, That the ſtirring of the potion might be operation of the poiſon more forcible than otherwiſe d have been; for inaſmuch as ſuch a murderous intenti- ich of itſelf perhaps in ſtrictneſs might juſtly be made pu- e with death, proves now in the event the cauſe of the loſing a ſubject, it ſhall be as ſeverely puniſhed as if it intended effect, the miſſing whereof is not owing to any f malice, but of power.

. 43. But if one happen to be poiſoned by ratſbane laid er to deſtroy vermine, the perſon by whom he is ſo killed y of homicide *per infortunium* only, becauſe his intentions wholly innocent.

Plow. 474. 9 Co. 81. 1 Hale 431. Sum. 50.

. 44. Alſo if a third perſon accidentally happen to be by one engaged in a combat with another upon a ſudden el, it ſeems that he who kills him is guilty of manſlaughter But it hath been adjudged, That if a juſtice of peace, ble, or watchman, or even a private perſon, be killed in vouring to part thoſe whom he ſees fighting, the perſon om he is killed, is guilty of murder; and that he cannot e himſelf by alledging that what he did was in a ſudden af- n the heat of blood, and through the violence of paſſion; who carries his reſentment ſo high, as not only to execute venge againſt thoſe who have affronted him, but even againſt s have no otherwiſe offended him but by doing their duty, ndeavouring to reſtrain him from breaking through his, ſuch an obſtinate contempt of the laws, that he is no more favoured, than if he had acted in cool blood.

1 Hale 441, 446, 457. Sum. 455. 3 Inſt. 52. Dalt. c 93. F. Cor. 180. Savil 67. Kely. 66. 22 Aſſ. 71. 4 Co. 40. 9 Co. 68. Crom. 25. Foſ. 308, 309.

. 45. Yet it hath been reſolved, That if the third perſon in ſuch ſudden affray do not give notice (2) for what pur- he comes, by commanding the parties in the king's name ep the peace, or otherwiſe manifeſtly ſhewing his intention not to take part in the quarrel, but to appeaſe it, he who him is guilty of manſlaughter only, for he might ſuſpect he came to ſide with his adverſary.

Kely. 66, 115. Foſ. 310, 311. Staunf. 13. 1 Hale 442, 460, 461. Ld. Ray. 1296.

(2) If the officer be within his proper diſtrict, and known, or but generally acknowd to bear the office he aſſumeth, the law will preſume that the party killing had due e of his intent, eſpecially if it be in the day-time. Foſter 135, 311.

. 46. As to the ſecond inſtance of this kind, *viz.* Such ng as happens in the execution of an unlawful action, re the principal deſign is to commit a bare breach of peace, not intended againſt the perſon of him who hap- to be ſlain. It ſeems clear, That regularly where rs perſons reſolve generally to reſiſt all oppoſers in commiſſion of any breach of the peace, and to execute it uch a manner as naturally tends to raiſe tumults and af- , as by committing a violent diſſeiſin with great numbers eople, hunting in a park, *&c.* and in ſo doing happen to kill an, they are all guilty of murder; for they muſt at their peril

1 Hale 442, 443, 463, 534. Sav. 67. Moor 86. Palm. 35. Crom. 24, 25. Sum. 47. 5 Mod. 289. Dyer 128. S. P. C. 17. Foſter 354. 9 St. Tr. 715.

peril abide the event of their actions, who wilfully engage in such bold diſturbances of the public peace, in open oppoſition and defiance of, the juſtice of the nation. (3)

(3) The fact however muſt appear to have been committed ſtrictly in proſecution of the purpoſe for which the party was aſſembled, Prin. P. L. 234. Therefore if divers perſons be engaged in an unlawful act, and one of them with malice prepenſe againſt one of his companions, finding an opportunity, kills him, the reſt are not concerned in the guilt of that act. Kely. 112. becauſe it hath no connection with the crime in contemplation. Prin. P. L. 235. So where two men were beating another man in the ſtreet, a ſtranger made ſome obſervation upon the cruelty of the act, upon which one of the two men gave him a mortal ſtab with a knife. Both the men were indicted as principals in the murder, yet, although both were doing an unlawful act in beating the man, and the death of the ſtranger did not enſue upon that act and it appearing that only one of them intended any injury to the perſon killed, the judges were of opinion that the other muſt not be guilty either as principal or acceſſary, and upon the caſe of the King v. Thomas Kely. 66, 67. he was acquitted. 8. Mod. 164. Trin. 9 Geo. 1. and 12 Mod. 629. Mich. 13 W. 3. Yet ſee 12 Mod. 256.

Crom. 28.
Sum. 56.
1 Hale 440, 441.
Foſter 312.

Sect. 47. Yet where diverſe rioters having forcible poſſeſſion of a houſe, afterwards killed a perſon whom they had ejected as he was endeavouring in the night forcibly to regain the poſſeſſion, and to fire the houſe, they were adjudged guilty of mere ſlaughter only, notwithſtanding they did the fact in maintenance of a deliberate injury, perhaps for this reaſon, becauſe the perſon ſlain was ſo much in fault himſelf.

Sum. 45.
Dalt. c. 93.
3 Inſt. 52.
Kely, 66,
22 Aſſ. 71.
4 Co. 40.
9 Co. 68.
Crom. 25.

Sect. 48. But if in ſuch or any other quarrel, where the affrays were ſudden or premeditated, a juſtice of peace, conſtable, watchman, or even a private perſon, be ſlain in endeavouring to keep the peace and ſuppreſs the affray, he who kills him is guilty of murder; for notwithſtanding it was not his principal intention to commit a felony, yet inaſmuch as he perſiſted in a leſs offence with as much obſtinacy, as to go on in it to the hazard of the lives of thoſe who no otherwiſe offend him, but in doing their duty in maintenance of the law, which therefore affords them its more immediate protection, he ſeems to be in reſpect equally criminal, as if his intention had been to commit a felony.

1 Hale, 437. 446.
Plow. 100, 101.
Crom. 23.
Dalt. c. 93.
Sum. 51, 52.
Savil. 67.
Palm. 30.

Sect. 49. As to third inſtance of this kind, *viz.* ſuch as happening, as happens in the execution of an unlawful action, the principal motive whereof was to aſſiſt a third perſon. It ſeems clear that if a maſter maliciouſly intending to kill another take his ſervants with him, without acquainting them with his purpoſe, to meet his adverſary and fight with him and the ſervants ſeeing their maſter engaged take part with him, and kill the other, they are guilty of manſlaughter only but the maſter of murder.

Crom. 26.
Sum. 52, 57.
Dalt. c. 94.
1 Roll. 407, 408.
3 Bulſt. 206.
Cowp. 832.

Sect. 50. And therefore it follows, *a fortiori*, that if a man's ſervant or friend, or even a ſtranger, coming ſuddenly ſee him fighting with another, and ſide with him, and kill the other; or ſeeing his ſword broken ſend him another, with which he kills the other, he is guilty of manſlaughter only.

Kely. 67, 86. 17.
Foſt. 318, 319.
12 Mod. 361.

Sect. 51. Yet in this very caſe, if the perſon killed were a bailiff, or other officer of juſtice, reſiſted by the maſter,

due execution of his duty, ſuch friend or ſervant, &c. are of murder, whether they knew that the perſon ſlain were cer or not.

. 52. But perhaps it may be objected, That in this laſt here ſeems to be no more malice than in the former; and hird perſon being wholly ignorant that the party killed n officer, ſeems to be no more in fault than if he had a private perſon.

. 53. To this it may be anſwered, That all fighting is unlawful, and that he, who on a ſudden ſeeing perſons ed in it, is ſo far from endeavouring to part them, as eve- d ſubject ought, that he takes part with one ſide, and fights quarrel, without knowing the cauſe of it, ſhews a high mpt of the laws, and a readineſs to break through them on ll occaſion, and muſt at his peril take heed what he does, onſequently might perhaps in ſtrict juſtice be adjudged in regoing caſes to act with malice, which doth not always a particular ill will againſt the perſon killed, as appears any of the above-mentioned caſes; and though ſuch perſon voured in reſpect of the ſuddenneſs of the occaſion, where the quarrel and the perſons are private, yet he muſt not ex- ſuch indulgence where the fight, in which he ſo raſhly en- , was begun in open oppoſition to the juſtice of the nation, perſon happens to be killed thereby who engaged in main- ce thereof, and on that account is under its more particular ; and may juſtly challenge, that his oppoſers be made ex- es to deter others from joining in ſuch unwarrantable quar-

O. B. 1784, 775. Foſt. 271, 309, 318.

1 Sid. 160. Noy 50.

Plow. 100.

. 54. But if a man ſeeing another arreſted and reſtrain- om his liberty, under colour of a preſs-warrant or civil pro- &c. by thoſe who in truth have no ſuch authority, hap- o kill ſuch treſpaſſers in reſcuing the perſon oppreſſed, he be adjudged guilty of manſlaughter only, notwithſtanding injured perſon ſubmitted to them, and endeavoured not to e himſelf, and the perſon who reſcued him, did not know he was illegally arreſted; for ſince in the event it appears, the perſons ſlain were treſpaſſers, covering their violence a ſhew of juſtice, he who kills them is indulged by the law, h in theſe caſes judges by the event, which thoſe who en- in ſuch unlawful actions muſt abide at their peril.

Kely. 60, 137. Crom. 27. Ld. Ray. 1296. Holt 485.

But the principles upon which this caſe was decided, are very elegantly and warmly controverted by Mr. Juſtice Foſter, P. 315 to 318.

. 55. As to the fourth inſtance of this kind, *viz.* Such ng as happens in the execution of an unlawful action, where- e direct deſign was to eſcape from an arreſt. It ſeems to greed, That whoever kills a ſheriff, or any of his officers, e lawful execution of a civil proceſs, as on arreſting a per- upon a *capias*, &c. is guilty of murder.

2 Hale, c. 83. Dalt. c. 93 1 Hale, 463. Sum. 45. Crom. 24. Strange 499. 6 St. Tr. 195. Foſter 29, 135, 308.

. 56. Neither is it any excuſe to ſuch a perſon that proceſs was erroneous, (for it is not void by being

9 Co. 66, 68. C. Jac. 280, 486.

1 Hale, c. 457, 458, 462. Foſt. 137, 311, 312, 318. B. 2. c. 13. f. 28, 2 Hale, c. 85. 6 Co. 68, 69.

fo,) or that the arreſt was in the night, or that the officer not tell him for what cauſe he arreſted him, and out of court, (which is not neceſſary when prevented by the party's ſiſtance;) or that the officer did not ſhew his warrant, which is not bound to do at all, if he be a bailiff commonly known, without a demand, if he be a ſpecial one.

C. Car. 372, 537 1 Hale, 56, 457, 460. 1 Jon. 346. 1 Lev. 91. 12 Co. 49.

Sect. 57. Yet the killing of an officer in ſome caſes will manſlaughter only.—As, Firſt, Where the warrant by which he acts gives him no authority to arreſt the party; as where bailiff arreſts *J. S.* a baronet, who never was knighted, by of a warrant to arreſt *J. S.* knight.

Jones, 429. 4 Inſt. 333.

6 Mod. 173. Sum. 46. Ld. Ray. 1028. Foſter 311, 319. 2 Roll. 137. Palm. 52.

Sect. 58. Secondly, Where a good warrant is executed an unlawful manner; as if a bailiff be killed in breaking open door or window to arreſt a man; or perhaps if he arreſt on a *Sunday* ſince 29 *Car.* 2. *c.* 7. by which all ſuch arreſts are unlawful.

1 Hale 458. 5 Co. 93. 2 Hale 117, 470. Salk. 79.

Peace officers having a *legal* warrant to arreſt for a breach of the peace, may open doors, after having given due notice and demanded admittance, Foſt. 136. but cannot juſtify breaking open *outward* doors or windows to execute a civil ſuit, Foſt. 320. Cowp. 3. Therefore, where a man, who had been arreſted, by the artful contrivance of an officer upon civil proceſs, (that of the warrant having been filled up as it had been ſealed) obliged the officer to decamp by ſnapping a piſtol at him three times; but the officer returning to the houſe, accompanied by the plaintiff and the attorney, and all three attempting to force in, the man within fired a gun through the door, and ſhot the attorney; and it was ruled manſlaughter only, 10 St. Tr. 462. See also the arguments in the London Magazine for Auguſt, 1759. Foſt. 311, 312.

Vide Sup c. 28. f. 5.

Sect. 59. As to the fifth inſtance of this kind, *viz.* Such killing as happens in the execution of an unlawful action, where the principal purpoſe was to uſurp an illegal authority. It is clear, That if perſons take upon them to put others to death either by virtue of a new commiſſion wholly unknown to the laws, or by virtue of any known juriſdiction, which clearly extends not to caſes of this nature; as if the court of Common Pleas cauſe a man to be executed for treaſon or felony; or a Court Martial, in the time of peace, put a man to death by martial law, both the judges and officers are guilty of murder.

Summary 46.

Douglas 200.

Sect. 60. But where perſons act by virtue of a commiſſion which if it were ſtrictly regular would undoubtedly give them full authority, but happens to be defective only in ſome point of form, it ſeems that they are no way criminal.

C. 29. f. 12. 3 Inſt. 57. Sum. 44. O. B. 1785, No. 751. 2 Mod. 628. Ld. Ray 143. Prin. P. L. 231.

Sect. 61. As to the ſixth inſtance of this kind, *viz.* Such killing as happens in the execution of an unlawful action, where no miſchief was intended at all. It is ſaid, That if a person happen to occaſion the death of another, inadviſedly doing an idle wanton action, which cannot but be attended with the manifeſt danger of ſome other; as by riding with a horſe known to be uſed to kick among a multitude of people, by which means no more than to divert himſelf by putting them into a fright, he is guilty of murder.

62. Alſo it hath been anciently holden, That if a per- S. P. C. 16.
not duly authorized to be a phyſician or ſurgeon, under- Pulton 22.
a cure and the patient die under his hand, he is guilty of Crom. 27.
y; but inaſmuch as the books wherein this opinion is holden, 43 Ed. 3. 33.
written before the ſtatute of 23 *H.* 8. which firſt exclud- F. Cor. 163.
ch felonious killing, as may be called wilful murder of ma- Britt. c. 5.
prepenſe, from the benefit of clergy, it may be well queſtion- 4 Inſt. 251.
whether ſuch killing ſhall be ſaid to be of malice prepenſe,
in the intent of that ſtatute; however it is certain highly
and preſumptuous for unſkilful perſons to undertake matters 1 Hale 429, 430.
is nature; and indeed the law cannot be well too ſevere in
caſe, in order to deter ignorant people from endeavouring
et a livelihood by ſuch practice, which cannot be followed
out the manifeſt hazard of the lives of thoſe who have to do
them: But ſurely the charitable endeavours of thoſe gentle-
who ſtudy to qualify themſelves to give advice of this kind, See Dalt. c. 93.
rder to aſſiſt their poor neighbours, can by no means deſerve 4 Comm. 197.
vere a conſtruction from their happening to fall into ſome
kes in their preſcriptions, from which the moſt learned and
rienced cannot always be ſecure.

For other particulars relating to this head, ſee the chapter of *principals and acceſſaries*, in the ſecond book.

CHAPTER THE THIRTY-SECOND.

OF PETIT-TREASON.

T common law not only the offences ſpecified in the twenty- 3 Inſt. 20, 21.
fifth of Edward the Third, but many others alſo were eſ-
ed petit treaſons, which are not ſo at this day; as (a) pi- (a) 40 Aſſ. 35.
by a ſubject; (b) diſcovery of the king's counſel by one of Inf. c. 37. f. 2.
grand jury; (c) an attempt by a wife to kill her huſband, (b) 27 Aſſ. 63.
3 Inſt. 22.
Dalt. c. 91. (c) S. P. C. 10. See 1 Hale 377, to 382.

ut by 25 Edw. 3. no offence ſhall be adjudged petit trea-
except in the following inſtances: Firſt, where a ſervant
his maſter; Secondly, Where a wife kills her huſband;
rdly, Where an eccleſiaſtical man, ſecular, or religious,
his prelate to whom he owes obedience.

2. And this ſtatute hath been ſo ſtrictly conſtrued, Plow. 86.
no other caſe whatſoever, which cannot be brought 3 Inſt. 12. 81.
in the meaning of thoſe words, however it may be in its 18. Eliz. c. 1. 11.
nature more heinous, ſhall, by parity of reaſon, be ex-
ded to be within the equity of them; and therefore the Daliſ. 14.
der of a father by a ſon ſhall not be puniſhed as petit trea- 3 Inſt. 20.
unleſs the ſon may by a reaſonable conſtruction come Sum. 24.
r the word ſervant, ſerving the father for meat, drink, Dalt. c. 91.
Crom. 19.

1 Hale, 380. Lamb. 248. cloaths, or wages, in which caſe he ſhall be indicted by the name of a ſervant. (1)

(1) "I am ſorry," ſays an elegant writer upon criminal law, "that parricide is not comprehended within the claſs of petty treaſon, nor ſubjected by our laws to any degree of exemplary notice." Reiterated experience hath given a melancholy refutation to Hobbes's idea, "that it is impoſſible to commit ſo unnatural a barbarity." Prin. P. L.

1 Hale, 380. B. Treſ. 8, 12. Lucas 95. Plow. 86. 19 H. 6. 47. 3 Inſt. 20. 4 Co. 46.

Sect. 3. Yet the murder of a miſtreſs, or of a maſter's wife, has been adjudged petit treaſon within this ſtatute, for notwithſtanding the perſon ſlain can in neither of theſe caſes, in propriety of grammar, come under the word maſter, yet they are clearly within the meaning thereof, being uſed here to ſignify any perſon to whom another ſtands related as a ſervant.

33 Aſſ. 7. B. Cor. 116. S. P. C. 10. Plow. 260. 2 Co. 99. Sum. 24. 3 Inſt. 20.

Sect. 4. Alſo the murder of a perſon by one who was his ſervant, upon malice conceived during the ſervice, though it be not within the expreſs words, is within the meaning of them, inaſmuch as it is but the execution of the treaſonable intention of the party, while he was a ſervant.

Sum. 24. 3 Inſt. 20, 21, 138. 1 Hale, 379. Dyer 332.

Sect. 5. Alſo the procuring, aiding, or abetting, of any of theſe offences, is clearly puniſhable within the meaning of the act, in the ſame manner as it was before; for the plain intent of the ſtatutes is only to reſtrain the judges from proceeding againſt other crimes, as petit treaſons, but no way to alter the law as to theſe.

Sum. 24. 1 Hale 378, 380. Dalt. c. 91. Dalt. c. 91. Crom. 19, 20.

Sect. 6. And therefore it ſeems agreed, That perſons accuſed of petit treaſon ſhall be conſtrued to be either not guilty at all, or principal or acceſſary, according to the known rules of law in other caſes, and from hence it follows, That if the fact appear to have been done upon a ſudden falling out, or in the party's neceſſary ſelf-defence, *&c.* it cannot be petit treaſon. For inaſmuch as all petit treaſon implies murder, and is the higheſt degree thereof, wherever the circumſtances do not make the offence murder, they cannot make it petit treaſon; and e *converſa*, generally wherever the circumſtances are ſuch as will make the killing of a ſtranger by a ſtranger murder, they make the killing of a huſband, or maſter, *&c.* petit treaſon. Thus it hath been adjudged, that if a wife or ſervant procure a ſtranger to kill the huſband, or maſter, in the abſence of the wife, or ſervant, neither the procuror nor actor are guilty of petit treaſon, but of murder only; becauſe it is an allowed maxim, *That the offence of an acceſſary can never be of a higher kind than that of the principal*; but it ſeems clear, That if the wife or ſervant be either actually preſent, when the crime is done, or preſent only in judgment of law, as being in the ſame houſe but not in the ſame room, (in which caſe the hopes of the immediate aſſiſtance encourages and emboldens the murderer to commit the fact, which otherwiſe perhaps he would not have dared to do, and makes them guilty in the ſame degree, as

40 Aſſ. 25. Sum. 215. 3 Inſt. 20, 21, 139.

Crom. 19. Dy. 128, 332. Moor 91. Daliſ. 16.

had actually ſtood by with their ſwords drawn, ready to nd the villainy,) ſuch wife, or ſervant, being pricipals as h as the ſtranger, are guilty of petit treaſon, and the nger of murder; but it is ſaid, That if a wife procure a ant to kill the huſband, both are guilty of petit treaſon: even if a ſtranger procure a wife, or ſervant, to kill the band, or maſter, it ſeems that he may be indicted as ac- ary to petit treaſon. (2)

B. 2. c. 29. ſ. 89.

1 Hale 382. Dyer 332. Crom. 41. Daliſ. 16.

) A wife divorced *cauſa adulterii vel ſævitiæ*, is ſtill within this law, becauſe the bond natrimony is not thereby diſſolved, and ſhe may again lawfully cohabit with her band. But a divorce *cauſa conſanguinitatis vel pre-contractus*, entirely diſſolves the nup- tye, and annihilates the very character of wife. Therefore, a wife *de facto* only, and *de jure*, cannot commit this crime, for ſhe has no lawful lord to whom ſhe owes ection and obedience. Neither can a huſband be guilty of this crime by killing his *de jure*, for there is no reciprocity of obedience and ſubjection.

Sect. 7. A clergyman living and beneficed in one dioceſe kills the biſhop or metropolitan of that dioceſe, or of the ceſe where he is beneficed by diſpenſation; or the biſhop ordained him, may be guilty of this offence; for a ca- ical obedience reſults both from inſtitution and ordinati- (3)

1 Hale, 378, 382. 4 Comm. 204.

3) The law conſiders petty treaſon and murder as one offence, differing only in cir- nſtance and degree; Foſt. 327, and the principles that govern in the caſe of murder, equally applicable to petty treaſon. 4 Comm. 204. An appeal of death will lie, and *refois acquit*, or attaint in murder is a good bar in petit treaſon and *é converſo*. 2 Hale, , 232. 3 Inſt. 213. It is included in a pardon under the name of murder. 1 Hale, . And the offender may be indicted either for petty treaſon, murder, or manſlaughter, tried and found guilty on ſuch indictment, or either of thoſe crimes reſpectively, ording as the caſe may appear upon the evidence. 1 Hale, 378. Foſt. 326. ut, if the proſecutor be apprized of the real caſe, he ought to adapt the bill to the th of the fact. Foſt. 104, 326. For, though the offences are to moſt purpoſes con- red as ſubſtantially the ſame, yet there is ſome difference with regard to the judgment, a very material one with regard to the trial. Foſt. 327. The puniſhment is, in a n, to be drawn and hanged, and in a woman, to be drawn and burned. 1 Hale, . 3 Inſt. 311. And on the trial, the priſoner is intitled to a peremptory challenge thirty-five. Foſt. 327. Two witneſſes alſo are required both on the indictment and the trial. 1 Edw. c. 12. Foſt. 337. And the 5 and 6. Edw. 6 c. 11. by general rds extending to all treaſons, requireth that the witneſſes, *if living*, ſhall be examined erſon upon the trial in open court. Depoſitions therefore taken before the coroner, nformations taken by a juſtice of peace, are not evidence whereon to ground a con- ion of petit treaſon, *if the party be living*, though unable to travel, or kept out of way by the priſoner, or his procurement. Foſt. 337.

† *Sect.* 8. Principals in this offence were firſt debarred benefit of clergy by 12 Hen. 7. c. 7. and acceſſaries h before and after, by 4 & 5 Ph. & Ma. c. 4.

CHAP.

CHAPTER THE THIRTY-THIRD

Of SIMPLE LARCENY.

AND now we are come to offences againſt the goods another, which are generally called larcenies, from the *Latin* word *Latrocinium*, of which there are two kinds; Firſt, Simple larceny; Secondly, Mix'd larceny.

Simple larceny is alſo of two kinds, Firſt, Grand larceny; Secondly, Petit larceny.

Sum. 60. Dalt. c. 101. 1 Hale 503, 504. Foſter 121.

Sect. 1. Simple grand larceny is a felonious and fraudulent taking and carrying away, by any perſon, of the mere perſonal goods of another, not from the perſon, nor out of his houſe, above the value of twelve pence.

For the better explication of which definition, I ſhall in order conſider the ſeveral parts of it; as, Firſt, What ſhall be ſaid to be a felonious and fraudulent taking; Secondly, What ſhall be ſaid to be a carrying away; Thirdly, By whom the offence may be committed; Fourthly, What are ſuch goods the taking whereof may be felonious; Fifthly, How far ſuch goods ought to belong to another; Sixthly, Of what value they muſt be.

Kely. 24. B. Cor. 45, 48, 58, 137, 160. Sum. 61. (a) If a horſe be ſtolen the indictment ſhould run "*cepit et abduxit.*" If a ſheep, &c. "*cepit et effugavit.*" 1 Hale 504. C. Cir. Com. 320.

Sect. 2. As to the firſt particular, *viz.* What ſhall be ſaid to be a felonious and fraudulent taking? It is to be obſerved, That all felony includes treſpaſs, and that every indictment of larceny muſt have the words *felonicè cepit*, as well as *aſportavit*; from whence it follows, That if the party be guilty of no treſpaſs in taking the goods, he cannot be guilty of felony in carrying them away.

3 Inſt. 102, 103. Sum. 61. 1 Hale, 504. 13 Ed. 4, 9, 10. S. P. C. 25. Vide ſect. 6.

Sect. 3. And from this ground it hath been holden, That one who finds ſuch goods as I have loſt, and converts them to his own uſe *animo furandi*, is no felon; and *a fortiori*, therefore, it muſt follow, That one who has the actual poſſeſſion of my goods by my delivery, for a ſpecial purpoſe, as a carrier who receives them, in order to carry them to a certain place, or a taylor who has them in order to make me a ſuit of cloaths, or a friend who is intruſted with them to keep for my uſe, cannot be ſaid to ſteal them, by embeziling of them afterwards.

S. P. C. 25. See Exod. 22.

§. 4. And herein our law differs from the civil, which, ably to the *Moſaical* law, having no capital puniſhment *are* theſts, deals with offences of this kind as ſuch, as in juſtice moſt certainly it may; but our law which puniſhes heft with death, if the thing ſtolen be above the value of e pence, and with corporal puniſhment if under, ra- chuſes to deal with them as civil than criminal offences, ps for this reaſon, in the above mentioned caſe, concern- goods loſt, becauſe the party is not much aggrieved where ng is taken but what he had loſt before; and for this in the other caſes, concerning the imbeziling of goods ered to another by the owner, becauſe the party being ſted with the whole poſſeſſion, it may be preſumed that the offender and his offence are known, and conſequently perſon injured is ſuppoſed to have a remedy by action ſt him, from which conſideration ſome have made it part e definition of larceny, that it be committed without the wledge of the owner; and it ſeems rigorous to have re- ſe to ſevere laws, where probably more gentle ones will fectual.

Dalt. c. 101. Bract. l. 3. 150. Fleta, l. 1. 36. 2 Hale, 290.

§. 5. And agreeably hereto, it has been reſolved, That thoſe who have the poſſeſſion of goods by the delivery of party, may be guilty of felony by taking away part there- with an intent to ſteal it; as if a carrier open a pack and out part of the goods; or a weaver who has received ſilk work; or a miller who has corn to grind, take out part an intent to ſteal it; in which caſes it may not only be that ſuch poſſeſſion of a part diſtinct from the whole, was ed by wrong, and not delivered by the owner, but alſo it was obtained baſely, fraudulently, and clandeſtinely, opes to prevent its being diſcovered at all, or fixed upon one when diſcovered. (1)

1 Hale, 505. 13 E. 4. 9, 10. S. P. C. 25. Dalt. c. 102. Kely. 35. 1 R. Abr. 73.

(1) To conſtitute larceny the property muſt be taken from the *poſſeſſion* of the owner; efore, where A. intending to go a diſtant journey, hires a horſe, fairly and *bona fide*, hat purpoſe, and evidences the truth of ſuch intention, by actually proceeding on his , and afterwards rides off with the horſe, it is no theft; becauſe the felonious deſign hatched ſubſequent to the delivery, and the delivery having been obtained without d or deſign, the owner parted with his poſſeſſion as well as his property; O. B. 1784, 294, and thereby gave to A. dominion over the horſe, upon truſt, that he would re- him when the journey was performed. O. B. 1786, p. 333, 334.—But if the deli- of property be obtained with a preconcerted deſign to ſteal the thing delivered, al- gh the owner, in this caſe, parts with the thing itſelf, he ſtill retains, in law, the tructive poſſeſſion of it; therefore, where a man, having feloniouſly obtained the very of a bill of exchange under the fraudulent and deluſive pretence of diſcounting converted it to his own uſe; and it appearing upon the evidence that the owner never nt to part with the poſſeſſion, it was held to be felony; O. B. 1784, p. 294. ſo alſo re a horſe was obtained with the ſame deſign, upon pretence of trying its paces; B. 1779, p. 363. O. B. 1784, p. 293. So alſo, to obtain the delivery of money, with gn feloniouſly to take it away, under the falſe pretence of having found a diamond ring great value, has been determined by nine judges to be a taking from the poſſeſſion of owner, and conſequently felony; O. B. 1785. p. 160. So alſo to obtain the delivery goods under pretence of purchaſing them, and then to run away with them; Ray. 276. d, in general, where the delivery of the property is made for a certain, ſpecial, and ticular purpoſe, the poſſeſſion is ſtill ſuppoſed to reſide, unparted with, in the firſt prietor. Therefore, where a maſter delivers goods to his ſervant to carry to a cuſto- r, but inſtead of ſo doing he converts them, on his way, to his own uſe, it is a feloni- taking; for the maſter had a right to countermand the delivery of them, and therefore the

the poſſeſſion remained in him at the time of the converſion; O. B. 1782, No. 32
B. 1783, No. 28. So alſo, if a watch maker ſteals a watch, delivered to him to c
O. B. 1779, No. 83. Or if one ſteal cloaths delivered for the purpoſe of being w
O. B. 1758, No. 18. Or goods in a cheſt delivered, with the key, for ſafe cuſtody
B. 1779, No. 83. Or guineas delivered for the purpoſe of being changed into
guineas; O. B. 1778. No. 52. Or a watch delivered for the purpoſe of being pa
O. B. 1784, No. 613. In all theſe inſtances the goods taken have been thought to
in the poſſeſſion of the proprietor, and the taking of them away held to be felony.

3 H. 7. 12.
21 H. 7. 14.
B. Cor. 58. 137.
S. P. C. 25.
Dalt. c. 102.
Moor. 246.
O. B. 1784. p. 292.
Pop. 84.
1 Hale 505, 667.

Sect. 6. Alſo it ſeems generally agreed, That one
has the bare charge, or the ſpecial uſe of goods, but no
poſſeſſion of them; as a ſhepherd who looks after my ſh
or a butler, who takes care of my plate, or a ſervant
keeps the key to my chamber, or a gueſt who has a piec
plate ſet before him in an inn, may be guilty of felony
fraudulently taking away the ſame; for in all theſe caſes
offence may as properly come under the word *cepit*; the injur
the owner is as great, and the fraud as ſecret, and the vil
more baſe, than if it had been done by a ſtranger. (2)

(2) Therefore, if the clerk to a banker or merchant has the care of money, or
has acceſs to it for ſpecial and particular purpoſes, and is ſent to the bag or drawe
money, for the purpoſe of paying a bill, or if he is ſent for the purpoſe of bri
money generally out of that bag or drawer, and at the time he brings that money
clandeſtinely and ſecretly takes out other money for his own uſe, he is as much gui
a felony as if he had had no permiſſion or acceſs to it whatever. So, if a ſervant h
to a library for one particular book and he takes another, or being ſent for a ha
ſword, and he ſteals a cane; in all theſe caſes the offenders are ſaid to be guilty of f
for though the property is delivered, the poſſeſſion of it remains in the true owner; O
1784, p. 1295, 1304. So alſo where a perſon being left in an apartment, pawns th
niture or other property under his care, with a felonious deſign to ſteal it, it is f
O. B. 1785, p. 717. O. B. 1786, p.

Summary 62.
3 Inſt. 107.
B. Cor. 160.
S. P. C. 25.
O. B. 1786, p. 334.
1 Hale, 505.

Sect. 7. Alſo it ſeems clear, That if a carrier, after
has brought the goods to the place appointed, take them
again ſecretly *animo furandi*, he is guilty of felony, bec
the poſſeſſion which he received from the owner being
termined, his ſecond taking is in all reſpects the ſame as i
were a mere ſtranger.

1 Hale, 507.
3 Inſt. 108.
Sum. 63.
Kely. 43.
1 Sid. 254.
Raym. 276.

Sect. 8. And not only he who firſt lays his hands on
goods himſelf, but in many caſes he who receives them f
another, may be guilty of felonioufly taking them; as i
perſon intending to ſteal my horſe, take out a replevin,
thereby have the horſe delivered to him by the ſheriff;
one intending to rifle my goods, gets poſſeſſion from the
riff, by virtue of a judgment obtained, without any the
colour or title, upon falſe affidavits, &c. in which caſes
making uſe of legal proceſs is ſo far from extenuating, th
highly aggravates the offence, by the abuſe put on the
in making it ſerve the purpoſes of oppreſſion and injuſtice.

13 E. 4. 3.
Sum. 64, 69.
S. P. C. 61, 182.
B. Ap. 84, 100.
B. Coron. 71,

Sect. 9. Alſo he who ſteals my goods from *J. S.* who
ſtolen them before, may be indicted, or appealed, as ha
ſtolen them from me, becauſe in judgment of law, the poſſe
as well as property always continued in me. And for
cauſe, he who ſteals my goods in the county of B. and ca
them to the county of C. may be indicted or appealed in
county of C. as well as that of B. becauſe the poſſeſſion

contin

uing in me, every moment's continuance of the treſpaſs is ch a wrong to it, and may come under the word *cepit*, as as the firſt taking. Yet a pirate carrying the goods where- robbed me at ſea, into any county, cannot be indicted for there, becauſe the original taking was not ſuch a felony of the common law takes conuſance. 4 H. 7. 5, 6. 1 Hale, 507. 3 Inſt. 113.

But by 13 Geo. 3. *c.* 31. ſ. 4. "Any perſon having ſtolen, otherwiſe feloniouſly taken money, cattle, goods, or other ects in either part of the United kingdom, who ſhall after- rds have the ſame, or any part thereof, in their poſſeſſion the other part of the United kingdom, may be indicted of ceny in that part where they are ſo found with the proper- as aforeſaid; and by ſect. 5. Receivers may be indicted that part of the United kingdom where they ſhall receive, have in their poſſeſſion the property ſo ſtolen."

Of larceny by breach of truſt.

ſ. 10. It ſeems not to have been clearly ſettled before 4 Will & Mar. *c.* 9. whether a lodger, who ſtole the ture of his lodgings, were indictable as a felon, inaſmuch had a kind of ſpecial property in the goods, and was to the greater rent in conſideration of them; but if it had red clearly, from the whole circumſtance of the caſe, the firſt intention of the party in coming to the houſe, not to have the conveniency of lodging in it, but only, the colour thereof, to have the better opportunity of it, and to elude the juſtice of the law, by endeavouring ep out of the letter of it, by gaining a poſſeſſion of the with the conſent of the owner, I cannot ſee any good n why ſuch a perſon ſhould not be eſteemed as much a as a mere ſtranger, inaſmuch as his whole deſign was to ud the law, and the conſent of the owner was grounded ſuppoſition of his coming as a lodger, and could never been gained if the truth had appeared, which the party get no advantage by falſifying: And it brings a contempt the juſtice of the nation to ſuffer its laws to be evaded by little contrivances: However this queſtion is now ſettled e ſaid ſtatute, which hath enacted and declared, "That any perſon or perſons ſhall take away with an intent to al, imbezil or purloin any chattel, bedding or furniture, hich by contract or agreement he or they are to uſe, or all be let to him or them to uſe, in or with ſuch lodging, ch taking, imbeziling, or purloining, ſhall be to all intents d purpoſes taken, reputed, and adjudged to be larceny d felony, and the offender ſhall ſuffer as in caſe of felo- y." (3)

By 4. Geo. 3. c. 2. ſ. 53, houſe-holders muſt give an account of their lodgers on pain of 5l. Kely. 24, 81. Show. 50, 57.

For indictment on this ſtatute, vide Cro. Cir. Com. 339.

(3) A wife cannot be found guilty with her huſband upon this ſtatute, for ſhe is under coercion. O. B. 1783, No. 30. Nor without her huſband, if it ſhould appear that lodgings were let to *him*. O. B. 1761, No. 17. Nor even if it ſhould appear that lodgings were let jointly to both the huſband and wife, for it ſhall be conſtrued to be act of the huſband only. O B. 1758, No 105. The offender muſt be a lodger at time the larceny is committed. O. B. 1785, No. 74. The indictment alſo muſt ſet the name of the perſon by whom the lodgings were let. O. B. 1784. No. 747. the property ſtolen muſt be ſuch as may reaſonably be conſtrued the furniture of the of lodging taken.

Sect. 11.

Sect. 11. It is recited by 21 Hen. 8. c. 7. "That ... the time of the ſaid ſtatute, divers, as well noblemen, ... the king's ſubjects, had, upon confidence and truſt, de... unto their ſervants their caſkets, and other jewels, money, ... and chattels, ſafely to keep, to the uſe of their ſaid ma... miſtreſſes, and after ſuch delivery the ſaid ſervants had ... drawn themſelves, and gone away from their ſaid maſte... miſtreſſes, with the ſaid caſkets, jewels, money, goods ... chattels, or part thereof, to the intent to ſteal the ſame, ... defraud their ſaid maſters or miſtreſſes thereof, and ſome... being with their ſaid maſters or miſtreſſes, had converted the... jewels, money, and other chattels, or part thereof, to their ... uſe, which miſbehaviour ſo done, was doubtful in the common... whether it were felony or not; and by reaſon thereof the ... ſaid ſervants had been in great boldneſs to commit ſuch o... like offences." And thereupon it is enacted, "That all and ... "gular ſuch ſervants, (being of the age of eighteen years, ... "not apprentices) to whom any ſuch caſkets, jewels, m... "goods or chattels, by his or their ſaid maſters or miſ... "ſhall from thenceforth ſo be delivered to keep, that if ... "ſuch ſervant or ſervants withdraw him or them from their ... "maſters or miſtreſſes, and go away with the ſaid ca... "jewels, money, goods or cattels, or any part thereof, to ... "intent to ſteal the ſame, and defraud his or their ſaid ma... "or miſtreſſes thereof, contrary to the truſt and confidence ... "or them put, by his or their ſaid maſters or miſtreſſes, or ... "being in the ſervice of his ſaid maſter or miſtreſs, without ... "ſent or commandment of his maſter or miſtreſs he imbezil ... "ſame caſkets, jewels, money, goods or chattels, or any ... "thereof, or otherwiſe convert the ſame to his own uſe, ... "like purpoſe to ſteal it, That if the ſaid caſkets, jewels, ... "ney, goods, or chattels, that any ſuch ſervant ſhall ſo ... "away with, or which he ſhall imbezil with purpoſe to ... "it, as is aforeſaid, be of the value of 40s. or above, That ... "the ſame falſe, fraudulent and untrue act and demean... "from thenceforth, ſhall be deemed and adjucted fel... "&c."

See 1 Hale, 667. 668. Dalt. c. 102. Summary 63.

Sect. 12. In the conſtruction of this ſtatute the following ... nions have been holden: Firſt, That it extends only to ſuch ... were ſervants to the owner of the goods, both at the time w... they were delivered, and alſo at the time when they w... ſtolen.

Dyer 5. Sum. 62, 63. 3 Inſt. 105. Dalt. c. 102.

Sect. 13. Secondly, That it is ſtrictly confined to ſuch g... as are delivered to keep, and therefore that a receiver, w... having received his maſter's rents, runs away with them; ... a ſervant, who being intruſted to ſell goods, or to rec... money due on a bond, ſells the goods, *&c.* and departs w... the money, is not within the ſtatute; but that a ſervant, w... rec...

his maſter's goods from another ſervant to keep for the is as much guilty as if he had received them from the own hands, becauſe ſuch a delivery is looked upon as a by the maſter.

14. Thirdly, That it includes not the waſting or con- Summary 63. of goods, howſoever wilful it may be; nor the taking Dalt. c. 102. an obligation, or any other *bare choſe in action*. Dyer 5.

15. Fourthly, That it extends not to the taking of ings whereof the actual property is not in the maſter at e. Therefore, if a ſervant having money, or corn, *&c.* d to him, melt down the money of his own head, with- command of his maſter, into a piece of plate, or turn the o malt, and then run away with them, he is not within ute; becauſe the property of theſe things is ſo far chang- altering them in ſuch a manner, that they cannot be again, and the maſter cannot afterwards take them with- eſpaſs. But it is agreed, That if a ſervant make a ſuit hs of cloth, or a pair of ſhoes of leather, delivered to him maſter, and then run away with them, he is within the ; becauſe the property is no way altered. And even 5 H. 7. 16. Crom. 50. firſt caſe, whether the *very taking* of the plate or Dalt. c. 102. e within the ſtatute or not, yet I can ſee no reaſon, why the act of the ſervant taken together, ſhould not be looked upon nverſion of the maſter's goods to his own uſe, with an in- ſteal them, which brings it within the expreſs letter of tute: It has been reſolved, That a ſervant who changes See Crom. 50. ſter's money from ſilver to gold, and then runs away with Dalt. c. 102. is within the ſtatute; and I can ſee no good diſtinction n that and the preſent caſe.

16. The benefit of clergy was taken away from all Vide Bk. 2. c. s within this ſtatute, by 27 Hen. 8. c. 1-, and reſtored by 33. ſ. 66, 67. . 6. c. 12.—But it is enacted by 12 Ann. Stat. 1. c. 7. "that ſoever ſhall feloniouſly ſteal to the value of 40*s.* or more, g in any dwelling-houſe, or out-houſe, thereto belonging, hall aid or aſſiſt to commit any ſuch offence, ſhall be ab- tely debarred of the benefit of clergy.—But this act l not extend to apprentices under the age of fifteen years, ſhall rob their maſters as aforeſaid."

17. To the two foregoing larcenies, *by breach of truſt*, Vide the law of gers and *menial* ſervants, the legiſlature has added two larceny as to , *viz.* By officers or ſervants employed to tranſact the bu- the ſervants of of the bank of England; and by officers, or ſervants em- *private Bankers* d in the poſt-office. As to ſervants employed by the BANK explained in NGLAND, it is enacted by 15 Geo. 2. c. 13. ſ. 12. "That Seſſions paper ny officer or ſervant of the bank of England, being in- O. B. p. 1294. ted with any note, bill, dividend warrant, bond, deed, or and ante p. 136. ſecurity, money, or other effects belonging to the ſaid mpany, or having any bill, dividend warrant, bond, deed anyſecurity or effects of any other perſon lodged or de-

"poſited

" posited with the said company, or with him as a
" or servant of the said company, shall secrete, imbezle,
" away with the same, or with any part thereof he sha
" death without benefit of clergy."

† As to servants employed by the POST-OFFICE, i
acted by 5 Geo. 3. 25. s. 17. and 7 Geo. 3. c. 50.
" if any deputy, clerk, agent, letter-carrier, post-boy o
" or any other officer or person whatsoever employe
" ceiving, stamping, sorting, charging, carrying, conveying
" vering letters or packets, or in any other business relating
" post-office, shall secret, embezle, or destroy any letter,
" or bag of letters, which he shall be intrusted with, o
" shall have come to his possession, containing any ban
" bank post bill, bill of exchange, exchequer bill, Sou
" or East India bond, dividend warrant, navy or victua
" transport bill, ordnance debenture, seaman's ticket,
" tery ticket or certificate, bank receipt for payment on
" note of assignment of stock in the funds, letter of attor
" receiving annuity or dividends, or for selling stock in the
" or belonging to any company society or corporation, o
" Bank, South Sea, East Indian or any other company or
" or corporation, American provincial bill of credit, gol
" or bankers letter of credit, or note for or relating to
" ment of money or other bond or warrant, draught,
" promissory note whatsoever for the payment of the mon
" shall steal and take any of the same out of any letter or
" that shall come to his possession, he shall suffer death
" clergy." (4)

Vide the trial of John Mills O. B. 1785, No. 253, convicted upon this statute.

(4) In an indictment on this statute, the offender was charged in the first
courts, as, " A clerk employed in *charging and sorting* letters, &c." In the sec
fourth counts, as, " A person employed in the business relating to the general post
It appeared in evidence that he was only a *sorter* and not a *charger* of letters; and
therefore, by the direction of the Court, found a verdict upon the second and
counts only. In arrest of judgment it was moved, that the jury having acquit
on the counts which charged him as " a sorter and charger," and as he did not a
be " a person employed by the post-office *in any other business* but that of sorting,
one of the employments particularly specified in the statute, he could not be co
and eleven judges unanimously agreed that judgment should be arrested for the cau
alledged, but they inclined to think the jury migh have convicted the prisoner in
and third counts, by a special finding that he was a sorter only. Rex. v. Shaw. 2 Blac

† By Jac. 1. c. 7. and 17 Geo. 3. c. 56. " Persons emp
" in the hat, woollen, linen, fustian, cotton, iron, leather
" hemp, flax, mohair, silk, or dying manufacture, who
" embezel or clandestinely dye any of the materials with
" they are intrusted, and any person who shall knowingly
" sell, pawn, or dispose of the same, are liable to be pu
" by fine, whipping, and imprisonment."

Sect. 18. As to the second particular, *viz.* What sh
said to be such a carrying away of the thing stolen, a
bring the case within the word *asportavit*; which is nec
in every indictment of larceny. It seems that any the

3 Inst. 108.
2 Vent. 215.

g of the thing taken from the place where it was be- 7 Aſſ. 39.
ſufficient for this purpoſe, though it be not quite carried S. P. C. 26.
d upon this ground the gueſt, who, having taken off the B. Cor. 107.
rom his bed, with an intent to ſteal them, carried them 3 Inſt. 109.
hall, and was apprehended before he could get out of 1 Hale 508.
uſe, was adjudged guilty of larceny. So alſo was he Daliſ. 21.
ving taken a horſe in a cloſe with an intent to ſteal him, Crom. 36.
prehended before he could get him out of the cloſe: O. B. Seſſ. 1784 No. 537.
is he leſs guilty who pulls of the wool from another's Dalt. p. 501.
or (a) ſtrips their ſkins, with an intent to ſteal them; Kely. 31.
ho intended to ſteal plate takes it out of a trunk wherein (a) Rex. v. Martyn, Lent Aſſ. for Northampton, 1777.
and lays it on the floor, and is ſurprized before he can
off. (5)

man was detected in taking the contents of a bale of goods in a waggon. It appeared that the bale laid horizontally, and that he had ſet it on its end; but as it had not moved from the *ſpot*, this was held, upon a caſe reſerved, not to be a ſufficient away. But where a man with a felonious intention, had removed goods from to the tail of a waggon, it was held a ſufficient removal to conſtitute a carrying O. B. 1784, p. 734. So a diamond ear-ring ſnatched from a lady's ear, but lodged curls of her hair, and not taken by the thief, was held to be a ſufficient aſpor- O. B. 1784, No. 537.

19. As to the third particular, *viz.* By whom lar- Sup. c. 1.
may be committed,—It is certain that a feme covert ſ. 9. 10, 11.
e guilty thereof by ſtealing the goods of a ſtranger, 1 Hale 514, 515,
by ſtealing her huſband's, becauſe a huſband and wife 516, 637, 638.
nſidered but as one perſon in law; and the huſband, by Pult. 127.
ing his wife at the marriage with all his worldly goods, Sum. 65.
er a kind of intereſt in them; for which cauſe, even a B. Cor. 14. 77.
r cannot commit larceny in taking the goods of the Dalt. c. 104.
d by the delivery of his wife; as he may by taking away 13 Aſſ. 5.
ife by force and againſt her will, together with the goods 18 Ed. 3. 32.
huſband. S. P. C. 94.
Crom. 35.
See Proverbs c. 6. v. 30.

e Jure, b. 2. c. 2. ſ. 6, 7. Puffend. b. 2. c. 6. Britton, c. 10. Mirr. c. 4.

20. It is ſaid to be no felony for one reduced to ex-
neceſſity, to take ſo much of another's victuals as will
im from ſtarving; but if ſuch his neceſſity be owing to
hriftineſs, ſurely it is far from being any excuſe. (6)

A judge ought to be tender in ſuch caſes, and uſe much diſcretion and moderation. 565. But it ſeems to be an unwarranted doctrine, borrowed from the notions of vilians; at leaſt it is now antiquated, the law of England admitting no ſuch expreſent. 4 Comm. 31. 1 Hale, 54.

21. As to the fourth particular, *viz.* What are ſuch
the ſtealing whereof may amount to felony, the following
ulars are to be obſerved.—Firſt, they ought to be no way 1 Hale, 509,
ed to the freehold. And therefore it is no larceny, 512.
bare treſpaſs, to ſteal corn or graſs, growing, or apples 12 Aſſ. 32.
ree, or lead on a church or houſe, but it is larceny to B. Cor. 76.
them being ſevered from the freehold, whether by the 1 Mod. 89.
, or even by the thief himſelf, if he ſever them at one Sum. 67.
and then come again at another time and take them.— Allen 83.
3 Inſt 109.
And 2 Keb. 875.

1 Vent. 187. Crom. 37. 18 H. 8. 2. S. P. C. 25. Strange 1137. 2 Comm. 16.

And the general reaſon of this diſtinction (7) between ſ fixed to a freehold and thoſe lying looſe, perhaps may b becauſe the former, not being to be removed without t and difficulty, are not ſo liable to be ſtolen, and therefor not to be ſecured by ſo ſevere laws as the other require.

(7) For an explanation of the principle upon which this diſtinction is founde 4 Comm. 233. 2 Bac. Abr. 470.—But many of the deſcriptions of property which within this notion of an adherence to the freehold, being thereby placed in a ſituati tremely precarious and unprotected, the legiſlature has from time to time impoſe ous penalties upon the ſtealing, injuring, or deſtroying of them. For an acco which vide appendix the firſt, chapter fifty-eight, under the title "Offences to p "adherent to the freehold."

Sum. 66, 67. Strange 1133. Seſſ. Caſ. 378. 3 Inſt. 109.

Sect. 22. Secondly, They ought to have ſome wor themſelves, and not to derive their whole value from the tion they bear to ſome other thing, which cannot be ſ as paper or parchment on which are written aſſurances cerning lands, or obligations, or covenants, or other ſ ties for a debt or other *choſe* in action. And the reaſon w fore there can be no felony in taking away any ſuch ſeems to be, becauſe, generally ſpeaking, they being of no ner of uſe to any but the owner, are not ſuppoſed to be ſo m danger of being ſtolen, and therefore need not to be pro for in ſo ſtrict a manner as thoſe things which are of a h price, and every body's money; and for the like reaſon no felony to take away a villein, or an infant in ward, &

B. Cor. 155. S. P. C. 25. Crom. 27. 8 Rep. 33. 4 Comm. 234.

Stra. 1136.

† But it is now enacted by 2 Geo. 2. *c.* 25. *ſ.* 3. "That

Made perpetual by 9 Geo. 2. c. 18.

"ever ſhall ſteal or take by robbery, any exchequer orde "tallies, or other orders intitling any other perſon to "annuity or ſhare in any parliamentary fund, or any e "quer bills, bank notes, South Sea bonds, Eaſt-India b "divided warrants of the Bank, South Sea company, "India company, or any other company, ſociety or cor "tion; bills of exchange, navy bills or debentures, "ſmiths notes for the payment of money, or other bon "warrants, bills, or promiſſory notes for the payment of "money being the property of any other perſon or of "corporation, notwithſtanding any of the ſaid particulars "termed in law a *choſe in action*, ſhall be deemed guil "felony of the ſame nature and in the ſame degree, and "or without the benefit of clergy, in the ſame manner a "would have been, if the offender had ſtolen or taken "robbery, any other goods of like value with the money "on ſuch orders, tallies, bills, bonds, warrants, debe "or notes, or ſecured thereby, and remaining unſatis "and ſuch offender ſhall ſuffer ſuch puniſhment as if he "ſtolen other goods of the like value, with the monies du "ſuch orders, tallies, bonds, bills, warrants, debentures "notes reſpectively, or ſecured thereby, and remaining "ſatisfied."

Vide O B. 1785 No. 253.

† It is alſo further enacted by 5 Geo. 3. *c.* 25. *ſ.* 17. and 7 Geo. 3. *c.* 50. *ſ.* 2. "That whoever ſhall rob any mail "w

ich letters are ſent or conveyed by the poſt, of any letter, cket, or bag of letters, or ſhall ſteal and take from any ch mail, or from any bag of letters ſent or conveyed by e poſt, or from or out of any poſt-office, or houſe or place, the receipt or delivery of letters or packets ſent, or to be nt by the poſt, any letter or packet, although ſuch robbery, aling, or taking ſhall not appear or be proved to be a tak- g from the perſon, or upon the king's highway, or to be a bbery committed in any dwelling houſe or any coach houſe, ble, barn, or any out-houſe belonging to a dwelling houſe; d although it ſhould not appear that any perſons were put fear by ſuch robbery, ſtealing, or taking, yet ſuch offenders all be deemed guilty of felony, and ſuffer death without the nefit of clergy,

ct. 23. Thirdly, They ought not to be things of a baſe, re, as dogs, cats, bears, foxes, monkeys, ferrets, and the like, h, howſoever they may be valued by the owner, ſhall ne- e ſo highly regarded by the law, that for their ſakes a ſhall die; as he may for ſtealing a hawk, known by him to claimed, not only by force of the ſtatute of 37 *Edw.* 3. 19. alſo at common law, in reſpect of that very high value h was formerly ſet upon that bird. Sum. 66. 3 Inſt. 109. 7 Co. 18. 3 H. 8. 3. Crom. 36. Dalt. c. 103. 2 Comm. 393. 1 Hale 512.

But it is recited by the 10 Geo. 3. *c.* 18. "That the actice of ſtealing dogs hath of late years greatly increaſed," it is therefore enacted, "That if any perſon ſhall ſteal y dog or dogs of any kind or ſort whatſoever from the own- r thereof, or from any perſon entruſted by the owner there- ith, or ſhall knowingly ſell, buy, receive, harbour, keep r detain any ſuch dog or dogs, on conviction by one witneſs, r on confeſſion, before two juſtices, they ſhall forfeit, for the rſt offence, not exceeding 30l. nor leſs than 20l. together ith the charges previous to and attending ſuch conviction; n default to be committed to the houſe of correction for not ore than twelve, nor leſs than ſix months, unleſs the penalty e ſooner paid." For the ſecond offence, not exceeding 50l. leſs than 30l and from twelve to eighteen months impriſon- t, &c. One juſtice, on information, may grant a warrant earch, &c. and if any ſuch dog, or the ſkin of ſuch dog, be d, the poſſeſſor, if privy, &c. is liable to the penalties afore- . On fourteen days notice, and entering into a recogni- ce, perſons aggrieved may appeal to the Quarter Seſſions, but ertiorari ſhall be allowed. (8)

) Mr. Burn has pointed out ſeveral inaccuracies in this ſtatute, and doubts very h whether from the ſpecial wording of it, it is penal to ſteal a bitch. 1 Vol. 497. s alſo ſaid, that the particular ſort of dog ſtolen muſt be deſcribed. Adding. P. 121.

ect. 24. As to the fifth particular, *viz.* How far the goods en away ought to belong to another. It ſeems agreed, at the taking of goods whereof no one had a property at the See 1 Hale 512. to 515. B. Cor. 190.

Sum. 67. 22 Aſſ. 99. 3 Inſt. 108 109. S. P. C. 25. Dalt. c. 103. F. Cor. 265. Owen. 20.

the time, cannot be felony; and therefore, That he who ... away treaſure-trove, or a wreck, (9) waif, or ſtray, before ... have been ſeized by the perſons who have a right therein, ... guilty of felony, and ſhall be only puniſhed by fine, &c.

(9) For offences by ſtatute in taking treaſure trove, or robbing a wreck, vide ... 2. c. 58.

(10) For the penalties impoſed by ſtatute on ſtealing or deſtroying fiſh, vide c. 58, appendix the third.

Sect. 25. Neither ſhall he who takes a fiſh in a river or ... great water, wherein they are at their natural liberty, be ... of felony, as he may be who takes them out of a trunk or ... &c. (19)

Foſt. 366. 1 Hale 511.

7 Co. 18. 22 Aſſ. 95. 22 H. 6. 59. 18 Ed. 4. 8. B. Cor. 92, 155, 164. S. P. C. 25. 3 Inſt. 109, 110. 18 H. 8. 2. Dalt. c. 92.

Sect. 26. Upon the like ground it ſeems clear, That ... cannot commit felony by taking deer, hares, or conies, in ... reſt, chaſe, or warren, or old pigeons being out of the ... &c. But it is agreed, that one may commit larceny in ... ſuch or any other creatures *feræ naturæ*, if they be fit for ... and reduced to tameneſs, and known by him to be ſo; ... ſeems the moſt plauſible opinion, That it is felony to ſteal ... pigeons in a dove-houſe ſhut up, or hares or deer (11) in a ... or even in a park, incloſed in ſuch a manner that the owner ... take them whenever he pleaſes, without the leaſt danger of ... eſcaping, in which caſe they are as much in his power as ... a pond, or young pigeons, or hawks in a neſt, &c. in taking ... which, for the like reaſon, it ſeems to be agreed, that ... may be committed.

(11) For the offences created by ſtatute in taking or annoying deer, and hares, vide poſt. chap. 49 title "offences by hunters."

Summary 68. 1 Hale 511. 7 Co. 17, 18. Dalt. c. 103. 3 Inſt. 98, 109. By 31 Hen. 8. c. 12. it is felony to take hawks eggs out of any neſts in the king's lands.

Sect. 27. Alſo it ſeems clear, That one may commit ... by taking away ſwans marked or pinioned, or thoſe which ... unmarked, if they be kept in a pond or private river; ... do I ſee why it is not as much felony to ſteal the eggs of ... ſwans or hawks, as it is to ſteal their young ones, unleſs ... becauſe 11 Hen. 7. c. 17, has appointed a leſs puniſhment ... this offence.

This is repealed by the general words of 1 Mary, c. 1.

For offences againſt cattle, vide poſt. c. 46.

Sect. 28. However, there is no doubt but that the ... of domeſtick beaſts, as horſes, mares, colts, &c. or of any ... tures whatſoever, which are *domitæ naturæ*, and fit for ... as ducks, hens, geeſe, turkeys, peacocks, or their eggs ... young ones, may be felony.

Vide 2 Hale. 290. S. P. C. 25, 96. Dyer 99. Dalt. c. 103. Sum. 67. B. 2. c. 23. ſ. 78.

Sect. 29. Alſo it is ſaid, That there may be felony ... taking goods the owner whereof is unknown, in which ... the king ſhall have the goods, and the offender ſhall be ... dicted for taking *bona cujuſdam hominis ignoti*. And it ... That in ſome caſes the law will rather feign a property, ... in ſtrictneſs there is none, than ſuffer an offender to ...

therefore it is ſaid, That he who takes away the goods of apel, or abbey, in time of vacation, may be indicted, in irſt caſe, for ſtealing *bona capellæ*, being in the cuſtody of and ſuch; and in the ſecond, for ſtealing *bona domus &* *ie, &c.* and *a fortiori*, therefore it follows, That he who s goods belonging to a pariſh-church, may be indicted for ing *bona parochianorum*. And it hath been adjudged, That ho takes off a ſhrowd (a) from a dead corpſe, may be in- d as having ſtolen it from him who was the owner thereof n it was put on; for a dead man can have no property.

7 Ed. 4. 14 15. S. P. C. 95. Dalt. c. 103. 3 Inſt. 110. B. Indict. 33. C. Eliz. 145 179 1 Hale 512. (a) 3 Inſt. 110. 12 Co. 113. Dalt. c. 103. 1 Hale 515. It is ſaid, 2 Hale 290 and 8 Mod. 249. that a pro-

y muſt be proved in ſome body at the trial, or it ſhall be preſumed in the priſoner his plea, of not guilty, Sed vide O. B. 1785. p. 782. and Appendix firſt, Sect. 13. otis.

ct. 30. And there is a ſpecial caſe wherein it is ſaid, t a man may commit larceny by taking of things, whereof bſolute property is in himſelf; as if A. (b) deliver goods to B. g a taylor or carrier, &c. and afterwards, with an intent to e him anſwer for them, fraudulently and ſecretly take them y; for B. had a ſpecial kind of property in the goods ſo vered to him, in reſpect whereof, if a ſtranger (c) had ſtolen n, he might have been indicted generally as having ſtolen goods, and the injury is altogether as great, and the fraud aſe, where they are taken away by the very owner.

(b) 7 H. 6. 43. 5 H. 7. 18. B. Cor. 45. 160. C. Eliz. 536. S. P. C. 26. 3 Inſt 110. Dalt. c. 103. (c) Sum. c. 67. Kellw. 70. O. B. 1785. 239.

ct. 31. As to the ſixth point, *viz.* of what value the goods n muſt be; if they be but of the value of 12d. or under, offence can be but petit larceny.

22 Aſſ. 39. 1 Hale C. 530. B. Cor. 84, 85. S. P. C. 24. 2 Roll. 78. Dalt. c. 101. 2 Inſt. 189. Kely. 68. Sum. 69, 70. 4 Com. 238. 1 Hale 12, 3 Inſt. 53.

ct. 32. Yet if two perſons, or more, together, ſteal goods e the value of twelve pence, every one of them is guilty of d larceny, for each perſon is as much an offender as if he been alone.

S. P. C. 24. Dalt. c. 101. Sum. 70. Crom. 36. Prin. P. L. 292.

ct. 33. Alſo it ſeems the current opinion of all the old s, That if one at ſeveral times ſteal ſeveral parcels of goods, under the value of twelve pence, but amounting in the le to more, *from the ſame perſon*, and be found guilty there- *the ſame indictment*, he ſhall have judgment of death as grand larceny; but this ſeverity is ſeldom practiſed. (12)

S. P. C. 24. 1 Hale 531. Crom. 36. Dalt. c. 101. Summary 70. 2 Keb. 719.

12) The value of the property ſtolen, muſt not only be, in the whole, of ſuch an a- nt as the law requires to conſtitute a capital offence; but the ſtealing muſt be to that unt at one and the ſame particular time. For the law will not permit things ſtolen ifferent times, which are, in fact, different acts of ſtealing, to be added together; as no number of petit larcenies will amount to a grand larceny, ſo no number of d larcenies will amount to a capital offence. O. B. 1784. p. 206.

In what caſes ſimple larceny is excluded from the benefit of the clergy will be ſhewn hereafter in the ſecond book, in the chapter concerning clergy. (13)

(13) In horſe-ſtealing, principal and acceſſary, 1 Ed. 4 c. 12. 2 & 3 Ed. 6. c. 33. Eliz. c. 12. In ſtealing woollens from the tenters, 22 Car. 2. c. 5. 15 Geo. 2. c. or from the loom, 12 Geo. 1. c. 34. Linen from the bleachers, 4 Geo. 2. c. 16. Geo. 2. c. 27. but the judge may tranſport for 14 years. Cattle, 14 Geo. 2. c. 6. Geo. 2. c. 34. On navigable rivers above 40s. 24 Geo. 2. c. 45. From veſſels wre or in diſtreſs, 12 Ann. c. 18. 26 Geo. 2. c. 19. Letters by poſt, 7 Geo. 3 c. Deer, hare, and conies, and fiſh, being armed and diſguiſed, 9 Geo. 1. c. 22. Prin from the perſon above 12d. 8 Eliz. c. 4. women. 3 Hen. 7. c. 2. 39 Eliz. c. 9. Sc ting, embeziling, or deſtroying bank notes, 15 Geo. 2. c. 13. 31 Geo. 2. c. 42. B lead, 25 Geo. 2. c. 10. Naval ſtores. 22 Car. 2. c. 5. Vide Ante, p. 75. Stealing from booth or tent, 5 and 6 Edw. 6. c. 9.

Summary. 69. 1 Hale 503.

Sect. 34. And now we are come to petit larceny, which ſeems to agree with grand larceny in all the particulars above mentioned, except only the value of the goods; ſo that whatever an offence would amount to grand larceny, if the things ſtolen were above the value of twelve pence, it is petit larceny if it be but of that value, or under.

Foſter 73.

B. Cor. 84. 1 Hale S. P. C. 24. Dalt. c. 101. Crom. 36. Hetley 66. 7 H. 8. 23.

Sect. 35. And if one be indicted for ſtealing goods to the value of ten ſhillings, and the jury find ſpecially that he is guilty, but that the goods are worth but ten pence, he ſhall not have judgment of death, but only as for petit larceny.

B. Cor. 219. 1 Hale 530. 3 Inſt. 218. App. 72. 143. Summary 70. Con. S. P. C. 24 Dalt. c. 101.

Sect. 36. It ſeems that all petit larceny is felony, and conſequently requires the word *felonice*, in an indictment for it. But it is certain, That it is not puniſhed with the loſs of life, lands, but only with the forfeiture of goods and chattels, whipping, or other corporal puniſhment.

Vide, alſo, 16. Geo. 2. c. 15. 8 Geo. 3. c. 15 19 Geo. 3. c. 74 24 Geo. 3. c. 56 reſpecting the tranſportation of offenders. B. 2. c. 33. ſ. 135. &c.

Sect. 37. † But it is enacted by 4 Geo. 1. c. 11. 6 Geo. 1. c. 23. "That where any perſon or perſons ſhall be convicted of grand or petit larceny, &c. who by the law ſhall be intitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping, it ſhall and may be lawful for the court before whom they are convicted, or any court held, at the ſame or any other place, with the authority, if they think fit, to order ſuch offenders to be tranſported for the ſpace of ſeven years."

N. B. There are no acceſſaries in petit larceny; therefore if two be indicted, one privately ſtealing from the perſon a handkerchief to the value of 12d. and another for receiving it, and the principal be found guilty value 10d. only, the acceſſary ought to be diſcharged. Foſter 73.

CHA

APTER THE THIRTY-FOURTH.

OF ROBBERY.

MIXT or complicated larceny is ſuch as hath a farther degree of guilt in it, as being a taking from the Perſon man, or from his Houſe. Prin. P. L. 287

arceny from the perſon of a man either puts him in fear, hen it is called robbery; or does not put him in fear, and it is called barely, Larceny from the perſon.

OBBERY is a felonious and violent taking away from the n of another, goods or money to any value, putting him ar. Summary 71. 3 Inſt. 68. 1 Hale 531.

the explication whereof, I ſhall conſider the following par- ars:—Firſt, What taking away will ſatisfy the word *cepit* indictment for this offence. Secondly, What ſhall be to be a taking away from the perſon. Thirdly, What of taking ſhall be ſaid to be violent. Fourthly, In what cts robbery differs from other larcenies.

. 1. As to the firſt point, *viz.* What taking away will y the word *cepit* in an indictment for robbery; it ſeems That he who receives my money by my delivery, either I am under the terror of his aſſault, or afterwards while k myſelf bound in conſcience to give it to him by an oath t purpoſe, which in my fear I was compelled by him to may in the eye of the law, as properly be ſaid to take it me, as he who actually takes it out of my pocket with wn hands. Summary 72. 44 E. 3. 14. 4 H. 4. 3. Dalt. c. 100. S. P. C. 27. Crompton 34. 3 Inſt. 68. F. Cor. 464. O. B. 1784. p. 296.

. 2. Neither can he who has once actually compleated fence, by taking my goods in ſuch a manner into his poſ- n, afterwards purge it by any re-delivery. † The outrage d to the rights of ſociety doth not vary in its nature, be- ineffectual in its conſequences (a). Therefore where a r, having taken a purſe, returned it again, ſaying, "If u value your purſe, take it and give me the contents;" but ſeized before the money was re-delivered, he was found y (b), for the continuance of the property in the poſſeſ- f the robber is not required by law (c). 3 Inſt. 60. Summary 70. (a) Prin. P. L. 286. (b) O. B. 1781. No. 1. (c) 3 Inſt. 69.

. 3. But he who only attacks me in order to rob me, does not take my goods into his poſſeſſion, though he go ſo far S. P. C. 27. Cromp. 34. 3 Inſt. 69. Dalt. c. 100. Sum. 71. 72. 1 Hale 532.

far as to cut off the girdle of my purſe, by reaſon where falls to the ground, is not guilty of robbery; but highly pu able at the common law by fine and impriſonment, &c. ſo enormous a breach of the peace.—† This puniſh however not proving ſufficient to deter offenders, it is m felony by 7 *Geo.* 2. *c.* 21. "to aſſault another with an i "tion to rob *him*," for which I ſhall refer to Appendi

(a Page 250. 251.) fourteenth (a) And to cruſh the offence in its earlieſt ſtag is enacted by 23 *Geo.* 3. *c.* 88, "that whoever ſhall be a "hended, and any piſtol, hanger, cutlaſs, bludgeon, or "offenſive weapon ſhall be found upon him, with intent fe

(b) Vide 17 G. 2. c. 5. page 570.) "ouſly to aſſault any perſon, he ſhall be deemed and pun "as a rogue and vagabond." (b)

Sect. 4. Yet in ſome caſes a man may be ſaid to rob where in truth he never actually had any of my goods i poſſeſſion; as where I am robbed by ſeveral of one gang one of them only takes my money, in which caſe, in j ment of law, every one of the company ſhall be ſaid to ta in reſpect of that encouragement which they give to an through the hopes of mutual aſſiſtance in their enterp Nay though they miſs of the firſt, intended prize, and them afterwards ride from the reſt and rob a third perſo the ſame higway, without their knowledge, out of their and then return to them, all are guilty of robbery, for came together with an intent to rob, and to aſſiſt one an in ſo doing.

1 Hale 533, 534, 537. 1 And. 116. Purſey's caſe. Crom. 34. Dalt. c. 100. Summary 72. B. 2. c. 29. ſ. 8.

Sect. 5. As to the ſecond point, *viz.* What ſhall be to be a taking away from the perſon. Not only the ta away a horſe from a man whereon he is actually riding, or ney out of his pocket, but alſo the taking of any thing f him openly and before his face, which is under his immed and perſonal care and protection, may properly enough be to be a taking from the perſon. And therefore he who ha firſt aſſaulted me takes away my horſe ſtanding by me, or ing put me in fear, drives my cattle in my preſence out of paſture, or takes up my purſe which in my fright I caſt i buſh, or my hat which fell from my head, or robs my ſer of my money before my face, may be indicted as having t ſuch things from my perſon. (1)

S. P. C. 27. Crom. 34, 35. Dalt. c. 100. 5 Inſt. 69. Summary 73. 1 Hale 533. Styles 156. Salk. 613. Carth. 145. B. R. H. 107. Strange 1015. Douglas 197. Comyns 478.

(1) Fear is the diſtinguiſhing ingredient between robbery and other larcenies. 1 68. Therefore where a thief clandeſtinely ſtole a purſe, and on its being diſcover his cuſtody, denounced vengeance againſt the party if he ſpoke of it, and then rode a it was held to be ſimple larceny only, and not robbery; becauſe the fear, excited b menaces of the thief, was ſubſequent to the act of taking the purſe. 2 Roll. 1 Hale 535. So where ſeveral men find another apparently intoxicated, and ſwear ſhall go home, they drag, abuſe, kick him, and clandeſtinely take his money, this robbery; for no demand is made of money, nor any fear excited for the purpoſe o taining it. O. B. 1784. p. 797.

§. 6. As to the third point, *viz.* What king of taking be ſaid to be violent. Wherever a perſon aſſaults another ſuch circumſtances of terror as put him into fear, and cauſes y reaſon of ſuch fear to part with his money, the taking of is adjudged robbery, whether there were any weapon n or not, or whether the perſon aſſaulted delivered his mo- pon the other's command, or afterwards gave it him upon aſing to uſe force, and begging an alms; for he was put ar by his aſſault, and gives him his money to get rid of (4)

1 Hale 533, 534. Sum. 71, 72.

Crom. 34. Dalt. c. 100. O. B. 1784. p. 296.

But it is not neceſſary that the fact of actual fear ſhould either be laid in the indict- or be proved upon the trial. It is ſufficient if the offence be charged to be done *r et contra voluntatem.* And if it appear upon the evidence to have been attended hoſe circumſtances of violence or terror, which in common experience are likely uce a man to part with his property againſt his conſent, either for the ſafety of his , or for the preſervation of his character and good name, it will amount to a rob- Foſter 128. 4 Comm. 242. Donally's caſe. O. B. 1778. p. 197. O. B. 1784. p. 71. 73.—Accordingly, to ſnatch a baſket of linen ſuddenly from the head of another. 1782. No. 483. *ſed vide contra.* O. B. 1784. p. 71. or to pull an earing from the a lady; O. B. 1784. No. 662. or if an officer feloniouſly take money from a priſo- t to take her to gaol, under colour of authority, &c. O. B. 1784. p. 295. Ray. 297. 489. without in either caſe having made any expreſs demand, have been ruled ſuf- *acts of violence* to conſtitute the crime of robbery. Prin. P. L. 286.——And to ob- roperty, by threatening to accuſe another of having been guilty of an unnatural has been held upon the ſolemn opinion of all the judges, to be an act ſufficient to in the mind of the party menaced, ſuch a *terror* and apprehenſion of miſchief as ſtitute the offence by *puting in fear*; O. B. 1784. p. 296. O. B. 1786. p. 542. for w in *odium ſpoliatoris* will preſume fear where there appears to be ſo juſt a ground Foſter 129. Prin. P. L. 287. Ante, Sect. 1.

§. 7. And ſome have gone ſo far as to hold. That if a meeting another going with his goods to market in order l them, compel him to ſell them to him againſt his will, guilty of robbery, though he give for them more than they orth: But perhaps this opinion is too ſevere, becauſe the ance to the party ſeems rather to proceed from the per- neſs of his humour, than from any real injury done to him; here ſeems to be no ſuch enormity in the intention of the g-doer, as is implied in the notion of felony.

Crom. 34, 35. Dalt. c. 100.

§. 8. However it is certain, That the claim of property, thing taken away, without any colour, is no manner of e.

1 Hale 509. Summary 62.

§. 9. As to the fourth point, *viz.* In what reſpects rob- differs from other larcenies.——Firſt, No other larceny have judgment of death, unleſs the thing ſtolen be above alue of twelve pence; but robbery ſhall have ſuch judg- how ſmall ſoever the value may be of the thing taken .

S. P. C. 27. Crom. 33. Dalt. c. 100. Summary 74.

§. 10. Secondly, Other larcenies whether from the n or not, ſhall not be ſuppoſed to be done with violence rror, but robbery is always laid as done on an aſſault with nce, and putting the party in fear, (a) which is properly thus expreſſed

3 Inſt. 68. Kelynge 70.

(a) Vide note 1. Sect. 6.

expreſſed in an indictment, *a perſona* J. S. *violenter, & f cepit & aſportavit in magnum prædicti* J. S. *terrorem.*

Sect. 11. Thirdly, But they all agree in this, That t fenders had the benefit of the clergy at the common law. many of them are at this day excluded in many caſes by ſ for which ſee the chapter in the ſecond book concerning c (5)

(5) Principals and acceſſaries before the fact, in this ſpecies of larceny, are debar clergy by 23 Hen. 8. c. 1. and acceſſaries after, by 4 Phil. & M. c. 4. if committe near about the highways. Moor, 16. 1 Hale, 535. But by 3 & 4 Will. & M. c. 9 ouſted of clergy generally, 4 Comm. 243. The words of the 23 Hen. 8. howeve purſued in indictments for this offence. By 4 Will. & Mar. c. 8. a reward of given on conviction of any robbery, committed in or upon any highway, paſſage, or open place: And by 6 Geo. 1. c. 23. ſ. 8. the ſtreets of London, Weſtminſter other places, are deemed highways within the meaning of 4 Will. & Mar. c. 8.—F reward of ten pounds and proceedings againſt the hundred, ſee 8 Geo. 2. c. 16. 2 2. c. 24.

CHAPTER THE THIRTY-FIFT

OF LARCENY FROM THE PERSON.

Dyer, 224. 2 Roll. 154. Crom. 34. Dalt. c. 100. Raym. 275. 276.

LARCENY from the perſon of a man without putting hi fear, is either done privily without his knowledge, which caſe it is excluded from the benefit of the clergy by 8 c. 4.) or openly and avowedly before his face; as if one take my hat from my head, and run away with it, or come into ſhop and cheapen goods, and run away with them without ing for them, which is agreed not to be robbery, and as it ſe is more properly indictable as a treſpaſs than felony, unleſs offender were either u known, or immediately fled the cou if he were known; otherwiſe I have a remedy againſt hi the ordinary courſe of civil juſtice; and it ſeems rigorou make ſuch offences capital, which probably may ſufficientl provided againſt by more gentle methods. (1)

(1) The caſe in Dyer 224. was an indictment *quod vi et armis apud B. in via regia* 40*ſ. in pecuniis numerat, &c.* and the judgment was, that it is not robbery if the per not put in fear *as by aſſault and violence.*—The caſe in Roll's Reports is where the fear excited ſubſequent to the taking, and therefore only larceny. The caſe in Raymond running away with goods, after having obtained the delivery, upon pretence of purch them, is expreſly decided to be felony. And Dalton from Crompton only ſays the ta taking of another's goods without *a title* ſo to do, is but a treſpaſs. Theſe references th fore by no means prove that the offences mentioned are not felonies, if committed wi felonious intent.——Vide Hale's Summary, 73, 74, 75. Kely. 43, 70. 1 Sid. 2

Sect. 2. However it is certain, That all open larcen from the perſon are within the benefit of the clergy, ex ſuch as are committed in a dwelling-houſe, *&c.* to the va of forty ſhillings, from which it is taken away by 12 Ann. c.

Sect.

Sect. 3. Alſo a private larceny from the perſon ſhall have benefit of the clergy, unleſs it be laid in the indictment as e *clam* and *ſecrete*, &c. in exact purſuance of the words of 8 z. 3. 4. 1 Hale 529.

Sect. 4. And no ſuch larceny ſhall have judgment of death, only as of petit larceny, if the jury find the offender guilty der the value of twelve pence; for the ſtatute does not alter nature of the offence, or make that capital which was not before, but only leaves the offender to the judgment of the mmon law. Summary 75. Dalt. c. 100. Prin. P. L. 292. 2 Hale 366. Foſter. 73.

HAPTER THE THIRTY-SIXTH.

Of LARCENY from the HOUSE,

THE other branch of complicated larceny, is that which is from the habitation of a man, which though it ſeem to ve a higher degree of guilt than ſimple larceny, yet I do not d it diſtinguiſhed from it by *the common law* either as to the rcumſtances above mentioned, which are requiſite to conſtitute e offence, or as to the puniſhment. Summary 76. O. B. 1784 No. 233. & p. 1217. 4 Comm. 240. Prin. P. L. 289.

However it is at this day excluded from the benefit of the ergy in many caſes by ſeveral acts of parliament, which I ſhall rticularly conſider in the ſecond book in the chapter concern- g clergy. (1) Bar. Obſ. 375.

(1) Firſt, in all larcenies *above the value of twelve pence* committed 1ſt, in a church or apel, with or without violence, or breaking the ſame, by 23 Hen. 8. c. 1. 25 Hen. 8. 3. 1 Edw. 6. c. 12. 5 & 6 Edw. 6. c. 9. & 10.——2d. In a booth or tent in a arket or fair, in the day time or in the night, by violence, or breaking the ſame, the wner or ſome of his family being therein, 5 & 6 Edw. 6. c. 9.——3d. In a dwelling- ouſe by day, by breaking the ſame, any perſon being therein, 3 & 4 Will. & Mar. c. .——4th. In a dwelling-houſe by day, without breaking the ſame, any perſon being herein and put in fear, 3 & 4 Will. & Mar. c. 9.——5th. In a dwelling-houſe by night, ithout breaking the ſame, the owner or ſome of his family being therein, and put in ear, 23 Hen. 8. c. 1.——Secondly. In all larcenies *to the value of five ſhillings*, com- itted, 1ſt. By breaking any dwelling houſe, or any out houſe, ſhop, or ware-houſe hereunto belonging, in the day time, although no perſon be therein, 39 Eliz. c. 15. Hale 508. and 522. Kely. 31. O. B. 1785. p. 312. 827.——2d. By ſtealing privately n any ſhop, ware-houſe, coach-houſe, or ſtable, by day or by night; though the ſame e not broke open, and though no perſon be therein, 10 & 11 Will. 3. c. 23. (Foſt. 78. Barr. 379).——Laſtly, In all larcenies *to the value of forty ſhillings*, from a dwelling- ouſe or its out-houſes without breaking in, and whether any perſon be therein or no. 2 Ann. c. 7.

CHAP-

CHAPTER THE THIRTY-SEVENT

Of PIRACY.

TO what has been ſaid concerning ſuch larcenies as are fe
nies by the common law, it may not be improper to a
ſomewhat concerning piracy (1) and depredation at ſea, wh
is a capital offence by the civil law.

(1) The king of England hath not only an empire and ſovereignty over the Britiſh
for the puniſhment of piracy, but, in concurrence with other princes and ſtates, an
doubted juriſdiction and power in the moſt remote parts of the world. If any per
therefore, native or foreigner, Chriſtian or Infidel, Turk or Pagan, with whoſe cou
we are in amity, trade, or correſpondence, ſhall be robbed or ſpoiled in the narrow
other ſeas, whether the Mediterranean, Atlantic, Southern, or any branches ther
either on this or the other ſide of the Line, it is piracy within the limits and cogniz
of the Admiralty Seſſions. Sir Ch. Hodge's Charge; Old Bailey. 8 Will. 3.

40 Aſſ. 25.
Staunf. 10.
2 Hale 369.
S. P. C. 10.
Summary 77.
Co. Litt. 391.
3 Inſt. 112.

Sect. 2. It is ſaid, That before 25 Edw. 3. this offence
puniſhed at common law as petit treaſon, if committed by a ſu
ject, and as felony, if committed by a foreigner: However
ſeems agreed, that after that ſtatute by which all treaſon
confined to the particulars therein ſet down, it was cogniz
only by the civil law.

5 St. Tr. 3.
8 Mod. 67. 76.
4 Comm. 71.

Sect. 3. But this proving very inconvenient, becauſe by t
law no offender ſhall have judgment of death, without his o
confeſſion, or direct proof by eye-witneſſes, it was enacted
28 Hen. 8. c. 15. "That all felonies and robberies, ſ
"upon the ſea, or in any haven, river, creek, or place, wh
"the admiral or admirals have or pretend to have pow
"authority or juriſdiction, ſhall be inquired, tried, heard de
"mined and judged in ſuch ſhires and places in the re
"as ſhall be limited by the king's commiſſion or commiſſ
"to be directed for the ſame, in like form and condi
"as if any ſuch offence or offences had been committed
"done in or upon the land; and ſuch commiſſions ſ
"be had under the king's Great Seal, directed to t
"admiral or admirals, or to his or their lieutenant, dep
"and deputies, and to three or four ſuch other ſubſtan
"perſons, as ſhall be named or appointed by the lord chan
"lor of England for the time being, from time to time and
"oft as need ſhall require, to hear and determine ſuch offe
"ces, after the common courſe of the laws of this land u
"for felonies and robberies, &c. done and committed upon
"land within this realm."

Sect. 4. And it is further enacted by the ſaid ſtatu
"That if any perſon or perſons happen to be indicted f
"a

ſuch offence done, or hereafter to be done, upon the or any other place above limited, that then ſuch order, ſes, judgment and execution, ſhall be uſed, had, done made, to and againſt every ſuch perſon and perſons ſo be-indicted, as againſt felons, &c. for any felony, *&c.* upon land, by the laws of the land is accuſtomed."

5. And it is further enacted by the ſaid ſtatute, "That as ſhall be convict of any ſuch offence by verdict, con-on, or proceſs by authority of any ſuch commiſſion, ſhall e and ſuffer ſuch pains of death, loſſes of lands, goods, chattels, as if they had been attainted and convicted of offence done upon the land, and alſo that they ſhall be uded from the benefit of the clergy." Vide the chapter of clergy in the ſecond book. 2 Hale 368, 370. Moor 756.

6. In the expoſition of this act it has been holden — That it does not alter the nature of the offence ſo as to that which was before a felony only by the civil law, now e a felony by the common law; for the offence muſt ſtill edged as done upon the ſea, and is no way cognizable by mmon law, but only by virtue of this ſtatute, which, by ing that in ſome reſpects it ſhall have the like trial and pu-ent, as are uſed for felony at common law, ſhall not be d ſo far as to make it alſo agree with it in other particulars are not mentioned. And from hence it follows, That fence remains as before of a ſpecial nature, and that it not be included in a general pardon of all felonies which, as, before this ſtatute, to be expounded of no felonies, are ſuch only by the civil law, ſhall continue ſtill to have me conſtruction. 3 Inſt. 112, 113. Summary 77. C. C. C. 502. Moor 756. 3 Inſt. 112. Co. Lit. 391.

7. From the ſame ground alſo it follows, That no per-hall, in reſpect of this ſtatute, be conſtrued to be, or pu-l as, acceſſaries to piracies before or after, as they might been if it had been made a felony by the ſtatute, whereby oſe would incidently have been made acceſſaries in the aſes, in which they would have been acceſſaries to a felony mmon law. And from hence it follows, That acceſſaries acy, being neither expreſly named in the ſtatute, nor by ruction included in it, remain as they were before, and triable by the civil law, if their offence were committed e ſea, but if on the land, by no law until 11 & 12 Will. 7. for 2 & 3 Edw. 6, c. 24 which provides againſt acceſ-in one county to a felony in another, extends not to ac-ries to an offence committed in no county, but on the ſea; by the ſaid ſtatute of 11 & 12 Will. they are triable in like 3 Inſt. 112. Sum. 77, 215. Yelv. 134, 135.

like manner as the principals are by the ſtatute of 28 8.

3 Inſt 112. Co. Lit. 391. Summary 77. B. 2. c. 23. ſ. 12.

Sect. 8. From the ſame ground alſo it follows, That the tainder for this offence corrupts not the blood, inaſmuch as ſtatute only ſays that the offender ſhall ſuffer ſuch pains of &c. as if he were attainted of a felony at common law; but not that the blood ſhall be corrupted, &c. (2)

(2) If the indictment be *vi et armis et felonice, &c.* as a robbery at common law blood may be corrupted; for piracy upon the ſtatute is robbery, and offenders have ſo indicted in the King's Bench, and on conviction, executed. But if the indictment *piratice depradavit* in the ſtyle of the civil law, the attainder corrupts not the blood, this diſtinction will reconcile the paſſages upon this ſubject in 3 Inſt. c. 49. and Co. ſ. 745. Vide 1 Hale 355.

3 Inſt. 114. Dyer 241, 308. Summary 78.

Sect. 9. Yet it has been reſolved, That an offender ſtanding mute on an arraignment by force of this ſtatute, ſhall have judgment of *pain fort & dure*; for the words of the ſtatute are, "a commiſſion ſhall be directed, &c. to hear and determine ſuch offences after the common courſe of the laws of the land, &c." † But by 12 Geo. 3. c. 20. "Standing mute in ſuch caſe amounts to a conviction, and the court ſhall award the like judgment as on a conviction by verdict or confeſſion."

3 Inſt. 112. S P. C. 114. 1 Roll. 175.

Sect. 10. Secondly, It has been holden, That the indictment for this offence muſt alledge the fact to be done upon the ſea, and muſt have both the words *felonice* and *piratice*: And that no offence is puniſhable by virtue of this act as piracy, which would not have been felony if done on the land, and conſequently that the taking of any enemy's ſhip by an enemy, is not within the ſtatute.

Moor 756. 1 Roll. 175. Summary 77. 3 Inſt. 113.

Sect. 11. Thirdly, It is agreed, That this ſtatute extends not to offences done in creeks or ports within the body of a county, becauſe they are, and always were cognizable by the common law. † But it was doubted whether this ſtatute of 28 8. had not taken away the trial of theſe offences before the admiral or his lieutenant or commiſſary, which had occaſioned a total diſuſe of ſuch manner of trial to the encouragement of pirates, who could not be tried by this ſtatute unleſs brought to England, at a great trouble and expence.

And made perpetual by 6 Geo. 1. c. 19.

Sect. 12, It is enacted therefore by 11 & 12 Will. 3. which was continued by 1 Geo. 1. c. 25. for five years, and from thence to the end of the next ſeſſions of parliament, "That all piracies, felonies and robberies committed upon the ſea, or in any place where the admiral has jurisdiction, may be tried and determined at ſea or upon land, in any of his majeſty's iſlands, or plantations, to be appointed by the king's commiſſion under the

al, or the ſeal of the Admiralty, directed to any of the mirals, &c. and ſuch perſons and officers by name, or for the ne being, as his majeſty ſhall think fit, who ſhall have power ntly or ſeverally, by warrant under hand and ſeal of any them, to commit any perſon againſt whom information of ſuch offences ſhall be given upon oath, and to call a court Admiralty, which ſhall conſiſt of ſeven perſons at the leaſt, d ſhall proceed in the trial of the ſaid offenders, according ſuch directions as are ſet forth at large in the ſaid ſtatute."

Sect. 13. And it is further enacted by the ſaid ſtatute, par. 8. hat if any of his majeſty's natural born ſubjects or denizens this kingdom, ſhall commit any piracy or robbery, or any t of hoſtility, againſt other his majeſty's ſubjects upon the ſea, der colour of any commiſſion from any foreign prince or te, or pretence of authority from any perſon whatſoever, ch offender and offenders, and every of them, ſhall be emed, adjudged, and taken to be pirates, felons and rob- rs; and they and every of them, being duly convicted reof according to this act, or the aforeſaid ſtatute of king enry the Eighth, ſhall have and ſuffer ſuch pains of death, s of lands, goods and chattels, as pirates, felons and rob- rs upon the ſeas ought to have and ſuffer."

Sect. 14. And it is farther enacted by the ſaid ſtatute, "That any commander or maſter of any ſhip, or any ſea-man or ariner, ſhall in any place where the admiral hath juriſdiction, etray his truſt and turn pirate, enemy or rebel, and pirati- lly and felonioufly run away with his or their ſhip or ſhips, any barge, boat, ordinance, ammunition, goods or mer- handizes, or yield them up voluntarily to any pirate, or bring y ſeducing meſſage from any pirate, enemy or rebel, or nſult, combine, or confederate with, or attempt or endea- our to corrupt, any commander, maſter, officer or mariner yield up or run away with any ſhip, goods or merchandize, r turn pirate, or go over to pirates, or if any perſon ſhall lay iolent hands on his commander, whereby to hinder him from ghting in defence of his ſhip and goods committed to his truſt, r that ſhall confine his maſter, or make or endeavour to make revolt in his ſhip, ſhall be adjudged to be a pirate, felon nd robber; and being convicted thereof, according to the di- ection of this act, ſhall have and ſuffer pains of death, loſs of nds, goods and chattels, as pirates, felons and robbers upon ne ſeas ought to have and ſuffer."

A captain doubly inſured his ſhip and cargo; and, having run the cargo on ſhore, procured the veſſel to be fraudulently burnt. This is no piracy, by reaſon of the ſpecial truſt repoſed in the offender by his owners. 8 Mod. 76, and 67.

Sect. 15.

Sect. 15, And it is farther enacted by the ſaid ſtatute, "all and every perſon and perſons whatſoever, who ſhall … "on the land or upon the ſeas, wittingly or knowingly ſet … "any pirate, or aid and aſſiſt, or maintain, procure, com… "counſel, or adviſe any perſon or perſons whatſoever, to … "commit any piracies or robberies upon the ſeas; and ſuch … "ſon or perſons ſhall thereupon do or commit any ſuch … "or robbery, then all and every ſuch perſon or perſons wh… "ever, ſo as aforeſaid, ſetting forth any pirate, or aiding … "aſſiſting, maintaining, procuring, commanding, counſ… "or adviſing the ſame, either on the land or upon the ſea, … "be adjudged to be acceſſary to ſuch piracy and robbery … "and committed: And further, That after any piracy or … "bery is or ſhall be committed by any pirate or robber w… "ever, every perſon or perſons, who, knowing that ſuch … "or robber has done or committed ſuch piracy and robb… "ſhall on the land or upon the ſea receive, entertain, or … "ceal any ſuch pirate or robber, or receive or take int… "cuſtody, any ſhip, veſſel, goods, or chattels, which have … "by any ſuch pirate or robber piratically and feloniouſly t… "ſhall be by this ſtatute, likewiſe adjudged to be acceſſ… "ſuch piracy and robbery: And that all ſuch acceſſaries to … "piracies and robberies, ſhall be enquired of, tried, heard … "termined and adjudged according to the common courſe o… "law, according to the ſaid ſtatute of 28 Hen. 8. as the princ… "of ſuch piracies and robberies may be, and no otherwiſe; … "being thereupon attainted ſhall ſuffer ſuch pains of death, … "of lands, goods and chattels, and in like manner as the p… "cipals of ſuch piracies, robberies and felonies, ought to ſ… "according to the ſaid ſtatute of Hen. 8. which is declared … "in full force; any thing in this laſt act to the contrary notw… "ſtanding."

Sect. 16. And by 4 Geo. 1. c. 11. ſ. 7. "All perſons … "ſhall commit any offence for which they ought to be adjud… "pirates, felons or robbers, by 11 & 12 Will. 3. may be t… "and judged for every ſuch offence, according to the form … "28 Hen. 8. and ſhall be excluded from their clergy."

† *Sect.* 17. And it is alſo enacted by 8. Geo. 1. c. … made perpetual by 2 Geo. 2. c. 28. "That if any co… "mander or maſter of any ſhip or veſſel, or any other perſ… "ſhall any wiſe trade with any pirate by truck, barter, … "change, or in any other manner; or ſhall furniſh any pir… "felon, or robber upon the ſeas with any ammunition, …

n or ſtores of any kind; or ſhall fit out any ſhip or veſſel wingly, and with a deſign to trade with, or ſupply, or reſpond with any pirate, felon, or robber upon the ſeas; f any perſon or perſons ſhall any ways conſult, combine, federate, or correſpond with any pirate, felon or robber n the ſeas, knowing him to be guilty of ſuch piracy, fe- or robbery, ſuch offenders ſhall, in every of the ſaid ca- be deemed guilty of piracy, felony and robbery, and be tried, &c. according to the proviſions of the 28 Hen. c. 15. and the 11 and 12 Will. 3. c. 71."

Sect. 18. And it is further enacted by the ſaid ſtatute, "That caſe of any perſon or perſons, belonging to any ſhip or veſ- whatſoever, upon meeting any merchant ſhip or veſſel on high ſeas, or in any port, haven, or creek whatſover, ll forcibly board or enter into ſuch ſhip and veſſel, and tho' y do not ſeize and carry off ſuch ſhip or veſſel, ſhall throw r board or deſtroy any part of the goods or merchandizes longing to ſuch ſhip or veſſel, the perſon or perſons who ll be guilty thereof ſhall in all reſpects be deemed and niſhed as pirates as aforeſaid."

Sect. 19. And it is further enacted by par. 2. "That ery ſhip or veſſel, which ſhall be fitted out with a deſign trade with, or ſupply, or correſpond with any pirate; and and every goods and merchandize put on board the ſame any purpoſe or intent as aforeſaid, ſhall be, *ipſo facto*, feited, one moiety to the king, the other to the informer, o may ſue for, and recover the ſame in the Court of Ad- iralty,"

Sect. 20. And by par. 3. "All perſons who are made ac- ſſaries by the 11 and 12 Will. 3. c. 7. ſhall be deemed and ken to be principal pirates, felons, and robbers, and ſhall proceeded againſt accordingly." And alſo, by par. 4 hat all and every offender or offenders convicted of any pi- cy, felony or robbery by virtue of this act, ſhall be exclu- d from the benefit of clergy. Alſo ſeamen maimed in fight ainſt pirates ſhall receive the rewards in the 23 Car. 2. c. 1. and be admitted into Greenwich hoſpital. And maſters ſeamen not defending themſelves againſt pirates, or who all utter any diſcouraging words, ſhall, if the ſhip be taken, rfeit their wages to the owners, and ſuffer ſix months impri- nment."

Sect. 21. Alſo it is enacted by 18 Geo. 2. c. 30. "That l perſons, being natural born ſubjects or denizens of his ajeſty, who during any wars have committed any hoſtili- es upon the ſea, or in any haven, river, creek, or place, "where

The adherence to the king's enemies was thought to make the offence high treaſon. This ſtatute was made therefore to remove the doubt.

" where the admiral or admirals have power, authority,
" riſdiction, againſt his majeſty's ſubjects by virtue or und
" lour of any commiſſion from any of his majeſty's enemies
" the ſea, or any the places where the admiral hath juriſd
" as aforeſaid, may be tried as pirates, felons, and robbe
" the ſaid Court of Admiralty, on ſhip board, or upon the
" in the ſame manner as perſons guilty of piracy, felony,
" robbery are directed to be tried; and on conviction ſhall
" as any other pirates, &c. ought by virtue of the 11 an
" Will. 3. c. 7. or any other act, provided that any perſon
" ſhall be tried and acquitted, or convicted according to
" act for any of the ſaid crimes, ſhall not be liable to be p
" cuted for the ſame crime or fact, as high treaſon. But th
" ſhall not prevent any perſons who ſhall not be tried accordi
" it, from being tried for high treaſon, by 28 Hen. 1. c. 5."

By 22 Geo. 3. c. 25. all contracts for ranſoming any private veſſel, &c. captured by the king's enemies are void, and the offender liable to a penalty of 500l. Wood's Inſt. 369, 473.

† *Sect.* 22. And it is further enacted by 32 Geo. 2. c. 12. " That in caſe any commander of any private ſhip of
" duly commiſſioned according to the directions of this act,
" the 29 Geo. 2. c. 34, ſhall agree with the commander or
" perſon of, or belonging to any neutral or other ſhip or
" veſſel or veſſels, except thoſe of his majeſty's declared ene
" for the ranſom of any ſuch neutral or other ſhip, &c. or
" reſpective cargo or cargoes thereof, or any part thereof,
" the ſame ſhall have been taken as prize, and ſhall in purſ
" of any ſuch agreement or agreements, actually quit,
" liberty, or diſcharge any ſuch prize or prizes, inſtea
" bringing the ſame into ſome port or ports belonging to his
" jeſty's dominions, every ſuch offender ſhall be deemed g
" of piracy, felony and robbery, and on conviction (in the
" ner as the act deſcribes) ſhall ſuffer ſuch pains of death,
" as pirates, felons, and robbers upon the ſeas ought to ſuffer
" cording to the laws now in being. But it is provided,
" the commander of any private ſhip of war, upon the cap
" of any neutral veſſel, *which by any law or treaty ſhall be*
" *ble only to the forfeiture of ſuch contraband goods as ſhall be*
" *oard thereof*, may receive ſuch goods, in caſe the comma
" is willing to deliver them, and thereupon quit, ſet at liber
" or diſcharge ſuch neutral ſhip or veſſel."

† *Sect.* 23. And for the more ſpeedy bringing of offen
to juſtice, and to prevent the inconveniencies occaſioned
want of frequently holding a ſeſſion of admiralty for the trial
offences committed on the high ſeas, it is further enacted,
30 Geo. 2. c. 25. ſ. 20. " That a ſeſſion of oyer and term
" and goal delivery, for the trial of offences committed
" the high ſeas, within the juriſdiction of the admiralty
" Engl

nd, shall be held twice at the least in every year, that is y, in the several months of March and October in each at Justice Hall in the Old Bailey, London; except at times as the sessions of oyer and terminer and goal de- y for the city of London and county of Middlesex shall ppointed to be there held; or in such other places in *England* as the lord high admiral of Great Britain, or commissioners for executing the office, or any three or e of them shall, in writing under their hands, directed to judge of the court of admiralty for the time being, ap- t."

4 Comm. 265.

ect. 24. Any one of the commissioners named in the ission of oyer and terminer for trying the offenc s afore- and also any justice of the peace may take informations, oath, touching any piracy, felony, or robbery com- as before recited, and, by warrant under hand and seal, the offender to be apprehended and committed to the goal, and shall bind over all persons whom they shall tively judge necessary to appear, prosecute, and give nce against the said offender at the then next admiralty s, which information and recognizance shall be trans- to the register to be laid before the court, and the al, his deputy, all sheriffs, and other officers whatsoever keeping of the peace, &c. are enjoined diligently to obey execute the precepts and orders of the court.

Vide section 21 to 24 of the before recited statute.

For the form of an indictment in piracy, vide Cro Cir. Com. 500.

HAPTER THE THIRTY-EIGHT.

OF BURGLARY.

ND now we are come to offences against the habitation of a man, which are of two kinds, *viz.* Burglary and Arson.

F. Cor. 178, 185, 264. Pulton 132. Staun. 30. 1 Hale 549. Dalt. c. 151. Cicero pro. dom. c. 41. Leg. Can. l. 61. Wilk. Leg. Ang. Sax. p. 273.

rglary is a felony at the common law, in breaking and ing the mansion-house of another, or, as some say, the , or gates of a walled town, in the night, to the intent to mit some felony within the same, whether the felonious in- be executed or not.

nan tit. Hamsecken. Sum. 79. 2 Hale 360. 22 Ass. 39, 95. F. Cor. 93. 3 Inst. Crom. 31. 4 Comm. 223.

or the better understanding whereof, I shall consider the wing particulars:—First, What shall be accounted night- for this purpose. Secondly, Whether there must be both

an

an actual entry and breaking. Thirdly, What breaki
ſufficient. Fourthly, What entry. Fifthly, In what
this offence may be committed. Sixthly, What deg
guilt is required in the principal intention.

Sect. 2. As to the firſt point, *viz.* What ſhall be a
ed night-time for this purpoſe; there are ſome opinions
burglary may be committed at any time after ſun-ſet, a
fore ſun-riſing; but it ſeems the much better opinion,
the word *noctanter*, which is preciſely neceſſary in every
ment for this offence, cannot be ſatisfied in a legal ſenſe,
appear upon the evidence, that there was ſo much day-li
the time, that a man's countenance might be diſc
thereby.

Dalt. c. 151.
S. P. C. 30.
3 Inſt. 63.
Savil, 47.
Crom. 32. 33.
7 Co. 6. 34.
Summary 79.
1 Hale 550.
Roll. 524.
Moor 660. Cro. Eliz. 583. 9 Co. 66. 4 Comm. 224.

Sect. 3. As to the ſecond point, *viz.* Whether there
be both an entry and breaking. Notwithſtanding ſome
opinions to the contrary, there ſeems to be no good re
doubt, but that both are required to compleat this offence
the words, *fregit* and *intravit*, being both of them preciſe
ceſſary in the indictment, both muſt be ſatisfied: And a
therefore there can be no burglary, where there is neit
them; as if on a bare aſſault upon a houſe the owner fli
his money.

Dyer 99.
S. P. C. 30,
3 Inſt. 64.
Summary 80.
1 Hale 551,
555, 556.
Con. Dalt. c.
151.
Crom. 31.
Dalliſon 22. Pult. 132. Foſter 108. O. B. 1785. p. 216.

Sect. 4. As to the third point, *viz.* What breaki
ſufficient. It ſeems agreed, That ſuch a breaking as is
by law in every unlawful entry on the poſſeſſion of an
whether it lie open or be incloſed, and will maintain a
mon indictment, or action of treſpaſs *quare clauſum fregit*,
not ſatisfy the words *felonice & burglariter fregit*, exce
ſome ſpecial caſes, in which it is accompanied with ſuch
cumſtances as make it as heinous as an actual brea
And from hence it follows, That if one enter into a hou
a door which he finds open, or through a hole which was
there before, and ſteal goods, &c. or draw any thing out
houſe through a door or window which were open b
or enter into a houſe by the doors open in the day-time,
lie there till night, and then rob and go away, without bre
any part of the houſe, he is not guilty of burglary.—But
certain, That he would have been guilty thereof if he
opened the window, or unlocked the door, or broke a
in the wall, and then had entered, &c. or if having e
by a door which he found open, or having lain in the
by the owner's conſent, he had but unlatched a chamber
or if he had come down by the chimney: (in which caſe

3 Inſt. 64.
Sum. 80. 82.
1 Hale 508, 527
551, 552, 555.
Crom. 34. 32.
Dalt. c. 151.
Kelynge 67.
Hutton 20.
C. Car. 65. 225
Dyer 99.
2 Hale 558.
1 And. 114 115
Dalt. c. 151.
Savill. 59.
Foſter 107.
O. B. 1784. p.
744.

night be ſaid, That the houſe was open there, and ſo not ally broken; yet it was as much incloſed as the nature of thing would bear.) And according to ſome opinions, he ld have been in like manner guilty, if upon an aſſault e by him upon the houſe, with an intent to rob it, the er had opened the door in order to drive him off, and eupon he had entered. In which caſe, as ſome ſay, the ing of the door by the owner, being occaſioned by the nious attempt of the other, is as much imputable to him f it had been actually done by his own hands.

O. B. 1784. p. 744.

Cromp. 32. Contra 1 Anderſon. 115.

ct. 5. And it has alſo been reſolved, That where divers ons came to a houſe with an intent to rob it, and knocked he door, pretending to have buſineſs with the owner, and g by that means let in, rifled the houſe, they were guilty burglary (a). Alſo it hath been adjudged, That thoſe e no leſs guilty, who having a deſign to rob a houſe, took ings in it, and then fell on the landlord and robbed him; he law will not endure to have its juſtice defrauded by ſuch ons. And for the like reaſon, *a fortiori*, it has been re- ed, That where perſons, intending to rob a houſe, raiſed a and cry, and prevailed with the conſtable to make a ſearch e houſe, and having got in by that means, with the owner's ent, bound the conſtable, and robbed the inhabitants, they e guilty of burglary. For there cannot be a greater af- t to public juſtice, than to make uſe of legal proceſs as a for ſuch villainous purpoſes; and therefore the whole act teemed tortious *ab initio*.

(a) Le Motts caſe related by Wild to Kelynge 42. Kely. 52. 63. O. B. 1784 No. 541. Crom. 32. Dalt. c. 151. Summary 81. 1 Hale 552. 3 Inſt. 64. 4 Comm. 225.

ct. 6. It is recited by 12 Ann. c. 7. "That there had ſome doubt, Whether the entering into a manſion-houſe, out breaking the ſame, with an intent to commit ſome felony, breaking the ſaid houſe in the night-time to get out, were glary." And thereupon it is declared and enacted, "That any perſon ſhall enter into the manſion or dwelling-houſe another by day or by night, without breaking the ſame, ith an intent to commit felony, or being in ſuch a houſe, all commit any felony, and ſhall in the night-time break the id houſe to get out of the ſame, ſuch perſon is, and ſhall taken to be, guilty of burglary, and ouſted of the benefit clergy, in the ſame manner as if ſuch perſon had broken d entered the ſaid houſe in the night-time, with an intent commit felony there."

ct. 7. As to the fourth point, *viz.* What entry is ſuf- nt to this purpoſe. It ſeems agreed, That any the leaſt y, either with the whole, or with but part of the body, ith any inſtrument, or weapon, will ſatisfy the word *in- it* in an indictment of burglary; as if one do but put foot over a threſhold, or his hand, or a hook, or piſtol, within

Dalt. c. 151. Summary 81. Kelynge 67. Fulton 132. 1 And. 115. 1 Hale 553, 555. Foſter 108. Crom. 31, 32. 4 Comm. 245.

within a window, or turn the key of a door which is locked on the inside, or discharge a loaded gun into a house, &c. (1)

(1) But quere, if the instrument must not be introduced for the purpose of committing the felony. Therefore, where thieves, having bored a hole *through* the door with a center bit, and part of the chips were found in the inside of the house, yet, as they neither got in themselves, nor introduced a hand or instrument for the purpose of taking the property, the entering was ruled incomplete. O. B. 1785. p. 216.

1 Hale 439, 555. Sum. 80, 81. Fost. 350, 353, Kely 111. Crom. 32.

Sect. 8. Nay it is certain, That in some cases one may be guilty of burglary, who never made any actual entry at all; as where divers come to commit a burglary together, and some stand to watch in adjacent places, and the others enter, and rob, &c. For in all such cases, the act of one is in judgment of law the act of all.

Con. Sum. 81. Dalton 151. 1 Hale 555.

Sect. 9. And upon the like ground, it seems difficult to find a reason, why a servant who confederating with a robber lets him in to rob a house, &c. should not be guilty of burglary as much as he; for it is clear, That if the servant were out of the house, the entry of the other would be adjudged to be also; and what difference is there when he is in the house? (2)

(2) It has been determined, by all the judges, upon a special verdict, that it is burglary in both the servant and the thief; and not to be distinguished from the case where one watches at the street end, while others go in. Strange 881. O. B. 1784, No. 10 St. Tr. 433.

1 Hale 550. 4 Co. 40. 3 Inst. 64, 67. Sum. 82, 86. 3 Inst. 64. Bract. 144. B. Cor. 93. 22 Ass. 39, 95. Dalt. 151. 27 Ass. 38. Fost. 38, 309. 1 And. 302 S. P. C. 30. Kelynge 27. Popham 42. Prin. P. L. 274. Spel. Gloss. Verb Burglaria.

Sect. 10. As to the fifth point, *viz.* In what place this offence may be committed. It seems to be the current opinion at this day, That it can be committed only in a dwelling house, and that the indictment for it must necessarily alledge the fact to be *in domo mansionali*. And Sir *Edward Coke* seems to say, That the breaking a church, &c. is therefore burglary, because the church is the mansion-house of God. But I can find nothing in the more ancient authors to countenance this nicety; for the general tenor of the old books seems to be, That burglary may be committed in breaking houses, or churches, or walls, or gates of a town. And *Staunforde* and *Andrews* mentioned precedents of indictments of burglary *in domo* without adding *mansionali*. However the constant course of late precedents and opinions makes it certainly a very dangerous, if not an incurable fault, to omit the word *mansionalis* in an indictment of burglary in a house; and therefore without question, it ought always to be inserted where the truth of the case will bear it. But surely it cannot be necessary or proper to have any such word in an indictment of burglary in a church, which by all the books above cited, seems to be taken as a distinct burglary from that in a house.

1 Hale 556. Summary 82. Crom. 33. Dalt. c. 151. Moor 660.

Sect. 11. However it is agreed by all, That a house where a man dwells but for part of the year, or a house which one has hired to live in, and brought part of his goods into, but has not yet lodged in, or a chamber in one of the inns

wherein a perſon uſually lodges, or a houſe which a wife hires without his privity, and lives in by her- ithout him, may be called his dwelling-houſe; and will ently ſatisfy the words *domus manſionalis* in the indictment, er any perſon were actually therein, or not, at the time offence. 4 Coke 40. 1 Jones 394. Kely. 43. 46. Pop. 42. 52. 3 Inſtitute 64. Pulton 132. Foſter 177.

. 12. Alſo all out-buildings, as barns, ſtables, dairy-, &c. adjoining to a houſe, are looked upon as part there- nd conſequently burglary may be committed in them; f they be removed at any diſtance (a) from the houſe, it that it has not been uſual of late to proceed againſt offences n as burglaries. 3 Inſtitute 64. Dalt. c. 151. B. Cor. 180. Crompton 32. 1 Hale, 558. Summary 82. Kely. 27, 52, 82.

m. 243. O. B. 1785, No. 483. (a) An out-houſe, occupied with, but ſeparated the dwelling houſe, *by an open paſſage eight feet wide*, and not within or connected *fence* incloſing both, is not within the *curtilage*. Rex. v. Garland, Eaſt. T. 1776, M. S.

. 13. If ſeveral perſons *dwelt* in one houſe, as ſer- gueſts, tenants at will, or otherwiſe, having no fix'd ertain intereſt in any part thereof, and a burglary be com- in any of their apartments; it ſeems clear, that the in- ent ſhall lay the offence in the manſion-houſe of the propri- &c.—But if one *hire* a diſtinct apartment in a houſe for his g for a certain time, and a burglary be committed therein, ſee no good reaſon why the indictment may not lay the of- *in domo manſionali* of ſuch lodger; for it ſeems to be agreed, an indictment for a burglary committed in a chamber in of the inns of court, may lay the offence *in domo manſionali* owner of the chamber; (b) and why may not ſuch an ment, with as much propriety be called the manſion-houſe n that takes it, during the time that he has a certain intereſt For ſo long as it is ſevered by the leaſe, it ſeems in the eye law to be as diſtinct from the other parts of the houſe, as perſon who rents it had a freehold or inheritance in it. O. B. 1785, p. 971. 1 Hale 556. Con. Kely. 83. Crom. 33. Dalt. c. 151. 3 Inſt. 65. Co. Lit. 48 Summary 83.

(b) Chambers have ſeparate outward doors, which are the extremity of obſtruction; and are enjoyed as ſeparate a houſe divided ſeparate houſes,

rty, as eſtates of inheritance; for life, or during reſidence —So, parate tenements, with a diſtinct outward door to each, will be wcaſtle houſe. Lee v. Ganſel, Cowper 1.—2 Salk. 532.

. 14. As to the objection, That he goes into the houſe he ſame door with the other inhabitants, and therefore is n inmate, and the whole ought to be conſidered but as houſe; I anſwer, That he muſt have ſome way to his ment as incident to his intereſt in it, and that ſuch way through a door which is common to him with others, not make the apartment itſelf in any reſpect leſs his own, a way through a door belonging to himſelf only would done (c) and if the law be ſo in this caſe, it ſeems to me reaſonable alſo, That if ſuch a lodger take alſo a cellar in

(c) There being only one door in common to all the inhabi-

makes no difference, where the owner does not ſleep in any part of the houſe; for t caſe each apartment is a *ſeparate manſion*. Trapſhaw's Caſe. Hil. 27 Geo. 3. M. S. Turner's Caſe, O. B. 1784. p. 391.

the ſaid houſe, a burglary committed in ſuch cellar, may be alledged *in domo manſionali* of the lodger, whether the cellar had any communication with the houſe or not (a) for it ſeems to be agreed, That a barn or ſtable, or other out-building near to a houſe, ſhall be looked on as part thereof, why ſhould not ſuch a cellar have the like eſtimation.

(a) Provided the owner does not dwell in any part of the houſe.—*Sed quære* for Kel. 83. ſeems contra.

Sect. 15. However it is agreed by all, That if one let a part of a houſe to lodge in, which is actually divided from the reſt, and have a door of its own to the ſtreet, a burglary therein may be alledged *in domo manſionali* of ſuch perſon. (b)

(b) If the owner live under the ſame roof with the inmates, there muſt be a ſeparate *outer* door or the whole is the manſion of the owner; but if the owner inhabit no part of the houſe, or even if he occupy a ſhop or a cellar in it, but do not ſleep therein it is the manſion of each lodger, although there be but one outer door. Rogers's Caſe, Mich. Geo. 3. M. S.

Hutton 33. 1 Hale 557, 558. vide 13 Geo. 3. c. 38. reſpecting burglary in the work-ſhops of the plate glaſs manufactory.

Sect. 16. But if he had taken it as a ſhop or work-ſhop for his uſe in day-time only, it ſeems that a felony therein could not be alledged in a manſion-houſe; not of him that let it, becauſe it is ſevered by the leaſe from that part of the houſe which belongs to him, nor of him to whom it is let, becauſe he takes it not to lodge in. (c)

(c) If he ſleep in any part of the building, however diſtant that part is from the ſhop, it may be alledged his manſion-houſe; provided the owner does not ſleep under the ſame roof alſo. Carrol's Caſe, Eaſter Term, 1782, M. S.

22 Aſſ. 95. B. Cor. 93. S. P. C. 30. Dalt. c. 151. But by 5 & 6 Edw. 6. c. 9. clergy is taken from this offence.

Sect. 17. From what has been ſaid it clearly appears, that no burglary can be committed by breaking into any ground cloſed, or booth, or tent, &c. for there ſeems to be no colour from any authority ancient or modern, to make any other burglary that is not done either againſt ſome houſe, or church or the walls, or gates of ſome town.

Dyer 99. Daliſ. 22. 3 Inſt 65. Kely 30, 67. Sum. 83, 125. Crom. 32. Con. Dalt. c. 151. 1 Hale 562.

Sect. 18. As to the ſixth point, *viz.* What degree of malice is required in the principal intention of the offender? It ſeems clear, That there can be no burglary but where the indictment both expreſsly alledges, and the verdict alſo finds, an intention to commit ſome felony; for if it appear that the offender only meant to commit a treſpaſs, as to beat the party, &c. he is not guilty of burglary. (d)

(d) A ſervant embezzled money intruſted to his care; left ten guineas in his maſter's quitted his maſter's ſervice; returned; broke and entered the houſe in the night, took away the ten guineas, and adjudged no burglary. Rex v. Bingley, O. B. Jac. 2. M. S. Sed vide. 1 Shower 53.

(e) King. v. Gray, Strange 481, exp in point.

Sect. 19. However it ſeems much the better opinion, That an intention *to commit a rape*, (e) or ſuch other felony which is made felony by ſtatute, and was a treſpaſs only at common law, will make a man guilty of burglary, as much as if ſuch offence were a felony at common law, becauſe whatſoever a ſtatute makes any offence felony, it incidentally gives it all the properties of a felony at common law.

Sect.

Sect. 20. To remove an inducement for the frequent miſſion of Burglaries, &c. By 10 Geo. 3. c. 48. "Buy- s or Receivers of ſtolen jewels, gold or ſilver plate, watch- , where the ſtealing ſhall have been accompanied with a urglary, or a robbery on the highway, ſhall be triable as ell before the conviction of the principal, whether he ſhall e in or out of cuſtody, as after—and tranſported for four- en years." Vide Appendix the Seventh, p. 235.

Sect. 21. And to check this offence in its progreſs. 23 Geo. 3. c. 88, "If any perſon ſhall be apprehended, aving upon him, any picklock key, crow, jack, bit, or ther implement, with an intent feloniouſly to break and nter into any dwelling-houſe, ware-houſe, coach-houſe, able, or out-houſe, he ſhall be deemed a rogue and vaga- ond within the 17 Geo. 2. c. 5." Vide O. B. 1786 p. 485, for an opinion upon this act. N. B. This was a miſdemeanour at common law. Caſes temp. Hardwicke, p. 371.

VERY man's houſe is conſidered as his caſtle, as well for his defence againſt injury violence, as for his repoſe. 5 Co. 92. To violate this ſecurity is conſidered of ſo ious a nature. 4 Com. 226, that the alarmed inhabitant, whether he be the owner mere inmate, Cro. Car. 544, is permitted to repel the violence by the death of the ant, without incurring the penalties of even excuſable homicide, 24 Hen. 8. c. 5; ſhould the aggreſſor eſcape with impunity from the execution of his guilty purpoſe, word of public juſtice ſtands alſo ready drawn againſt his life. Prin. P. L. 273. So ouſly indeed does the law interpoſe its concern to preſerve inviolate this domeſtic unity, that the bare intention to commit the felony conſtitutes the eſſence of the e. 4 Comm. 227. Foſter 109. In this point, burglary ſeems to participate the ciples of high treaſon. Brook Ab. Tit. Forfeit. The penal conſequences however leſs ſevere, The forfeiture of property is not ſo extenſive; and for a courſe of time, life of the convict was ſaved by the merciful plea of clergy. 4 Comm. But as the eaſe of national opulence furniſhed richer temptations to the ſpoiler, the interpoſition dditional terrors became neceſſary. Therefore by 18 Eliz. c. 7. clergy is taken away the *effence*. 4 Comm. 366. 2 Hale 364. Poſt. 357. and by 3 & 4 W. & M. c. 9. accеſſaries before the fact.—By 10 & 11 Will. 3. c. 23. Whoever ſhall convict a lar is exempted from all pariſh and ward offices, where the offence was committed. this the 5 Ann. c. 31. has ſuper-added a reward of forty pounds. And if an accom- being out of priſon, ſhall convict two or more offenders, he is intitled alſo to a par- of the felonies as enumerated in the act.

HAPTER THE THIRTY-NINTH.

OF ARSON.

RSON is a felony at common law, in maliciouſly and voluntary burning the houſe of *another* by night or day. 1 Hale 556. B. Cor. 135, 155.

nd I ſhall conſider: Firſt, What is ſuch a houſe in which on may be committed. Secondly, Whether this offence be committed in the offender's own houſe. Thirdly, much of the houſe ought to be burnt. Fourthly, With t degrees of malice. S. P. C. 36. 3 Inſt. 66. Dalt. c. 105. 2 Inſt. 188. 4 Comm. 220.

ect. 1. As to the firſt point, *viz.* What is ſuch a houſe which arſon may be committed. It ſeems agreed, That only a manſion-houſe, and the principal parts thereof, but any other houſe, and the out-buildings, as barns and les, adjoining thereto; and alſo barns full of corn, whe- 3 Inſt. 67. 4 Co. 20. Dalt. c. 105. 11 H. 7. 1. B. Cor. 226. 3 Inſt. 69.

S. P. C. 36. Summary 86. 1 Hale 567, 579. 4 Comm. 221, 366, 310.

ther

ther they be adjoining to any houſe or not, ſo far ſecured by [illegible] that the malicious burning of them is arſon. And it is ſaid, T[illegible] in an indictment they are well expreſſed by the word *domus*, wi[illegible] out adding *manſionalis*.

1 Hale 568. Summary 86. 3 Inſt. 67. Britt. f. 16. S. P. C. 36. Dalt. c. 105. 1 Burn. 289.

Sect. 2. But it ſeems that at this day the burning of the fr[illegible] of a houſe, or of a ſtack of corn, &c. is not accounted ar[illegible] becauſe it cannot come under the word *domus*, which ſeem[illegible] preſent to be thought neceſſary in every indictment of ar[illegible] Yet it is ſaid, That anciently the burning of a ſtack of corn w[illegible] accounted arſon. † And by the 9 Geo. 1. c. 22. whoever ſ[illegible] ſet fire to any houſe, (a) barn, or out-houſe; "or to any h[illegible] "cock, mow, or ſtack of corn, hay, or wood; or ſhall fe[illegible] "bly reſcue any perſon in lawful cuſtody for the ſame; or ſ[illegible] "procure another to join in committing any of the ſaid offen[illegible] "—ſhall ſuffer death without benefit of clergy."—But it is ſ[illegible] ſolved, (b) that this ſtatute only excludes the principal (c o[illegible] der from his clergy, more clearly than he was excluded be[illegible] (d); and does not alter the nature of the crime, or create [illegible] new offence.

(a) A priſon the entrance to which is through a dwelling houſe is within this act. Donevan's Caſe Black. 682.

(b) Acceſſaries before are excluded by 4 & 5 P. & M. c. 4.

But acceſſaries after are ſtill intitled to clergy. 1 Hale 573. (c) The King v. Spald[illegible] Eaſt. T. 1780. Breemes Caſe, Trin. T. 1780. Pedley's Caſe, B. R. upon a ſpecial v[illegible] dict, Trin. 22 Geo. 3. (d) Vide Alex. Poulters Caſe. 11 Coke 29.

Holme's Caſe. 1 Jones 351. C. Car. 377. Sed. vide Foſter 116.

Sect. 3. As to the ſecond point, *viz.* Whether arſon may [illegible] committed in the offender's own houſe. It ſeems clearly agre[illegible] That one ſeiſed in fee, or but poſſeſſed for years, of a h[illegible] ſtanding by itſelf at a diſtance from all others, cannot com[illegible] felony in burning the ſame. (e)

1 Hale 568, 569. 3 Inſt. 67. Dalt. c. 105. Cro. Car. 338. Kelynge 29. Foſter 115, 116.

Alſo it ſeems the much ſtronger opinion, That a man ſo ſei[illegible] or poſſeſſed of a houſe in town, who burns his own with an in[illegible] to burn his neighbours, but in the event burns his own only, [illegible] not guilty of arſon; for by the general tenor of the books ſpe[illegible] ing of this offence, it ſeems to be ſuppoſed to be done in [illegible] houſe of another, and not of the offender. Neither ſhall [illegible] act, which is only a crime in reſpect of the injury which it d[illegible] or may do, to another, be made a felony by reaſon of an in[illegible] tion thereby to commit a felony, if ſuch intention be not e[illegible] cuted.—However this is certainly an offence highly puniſhable [illegible] regard of the malice thereof, and the great danger to the pub[illegible]

(e) A leſſee for three years *in poſſeſſion*, under a term for 99 years, originally granted [illegible] the perſon ſeiſed in fee, is not guilty of ARSON, by ſetting the houſe on fire. Breem[illegible] Caſe, Trin. 20 Geo. 3. M. S.—Nor a tenant by copyhold *in poſſeſſion*, although the prem[illegible] burnt, are ſurrendered to the lord to the uſe of a mortgagee, not admitted upon the [illegible] render. Rex. v. Spalding, Eaſter Term, 1780. *Sed quere* if this point was deter[illegible] the indictment only charging that he burnt *his own houſe*, M. S.—Nor can a tenant in p[illegible] ſeſſion, be guilty of this offence, by ſetting the houſe he is *ſo poſſeſſed of* on fire: for [illegible] principle in Holme's Caſe, was intended to protect the perſon in actual poſſeſſion. [illegible] Lord Mansfield ſeems to lament, while he is forced to admit the authority of that deci[illegible] Pedley's Caſe. B. R. Trin. 22 Geo. 3.—It is however determined that a widow, in[illegible] to dower, but no dower aſſigned, from a houſe, the equity of the redemption of w[illegible] had deſcended from her huſband to her infant children, and for whoſe benefit ſhe had [illegible] it and received the rent, is guilty of arſon by burning it in the poſſeſſion of her tenant.—[illegible] it was ſaid that if ſhe had been ſeiſed of the freehold, it would ſtill have been fe[illegible] from whence it is contended that a reverſioner who ſhall maliciouſly fire the hou[illegible] poſſeſſion of his tenants *under leaſes* from himſelf or his anceſtors, will be guilty of Ar[illegible] Harris's Caſe, Foſter 113, to 116.—And there is a late caſe in which a pauper, wh[illegible] fire to the pariſh-workhouſe, was held guilty of Arſon.

h attends it, and the offender may be ſeverely fined and im-
ned during the king's pleaſure, and ſet on the pillory, and
d to his good behaviour during life.

t. 4. As to the third point, *viz.* How much of ſuch houſe
t to be burnt, It ſeems to be clearly agreed, That neither a
intention to burn a houſe, nor even an actual attempt to do
putting fire to part of a houſe, will amount to felony, if no
of it be burnt; for the indictment muſt have the words
dit & combuſſit: But it is certain, That if any part of the
e be burnt, the offender is guilty of felony, notwithſtanding
ire afterwards be put out, or go out of itſelf.

Vide K. v. Sarah Macing, O. B. 1761. p. 69.
1 Hale 570.
Summary 85.
Dalt. c. 105.
3 Inſt. 66.
4 Comm. 222.

t. 5. As to the fourth point, *viz.* With what degree of
ce ſuch houſe ought to be burnt. It ſeems clear, That if
ire happened through negligence (b) or miſchance, it cannot
e him, who is the unfortunate cauſe of it, guilty of arſon;
he indictment muſt alledge the offence to have been done
ntarie ex malitia ſua præcogitata & felonice. Yet if one ma-
uſly intending only to burn the houſe of A. happen thereby
urn the houſe of B. it is certain that he may be indicted as
ng maliciouſly burned the houſe of B. for where a felonious
gn againſt one man miſſes its aim, and takes effect upon another,
all have the like conſtruction as if it had been levelled againſt
who ſuffers by it

(b) Vide ch. 53.
1 Hale, 569.
3 Inſt. 67.
Summary 85.
Plow. 475.

HAPTER THE FORTIETH.

Of FELONIES by STATUTE.

FFENCES more immediately againſt the Subject, made capital by Statute, and not reduced to any of the going heads, are ſuch as are committed;

1. Againſt Women.
2. Againſt the Rights of Marriage.
3. Againſt the Members of a Man's Body.
4. Againſt Records.
5. Againſt Cattle.
6. By Purveyors.
7. By Soldiers and Mariners.
8. By Hunters
† 9. By Deſtroyers of Offences, Turnpikes, and Bridges.
10. By Goalers,
11. By Tranſporters of Sheep or Wool.
12. By Servants.
13. By Egyptians.

14. By

14. By Cutters of Pow-dike, and † Deſtroyers of Sl
&c. on Navigable Rivers.
15. By Treſpaſſers on the Borders, and Rioters.
16. By Bankrupts.
17. By Counterfeiters of Bank-Notes, Exchequer
Stamps, South-Sea Bonds, Lottery Orders, &c.
† 18. Againſt Property adherent to the Freehold.
† 19. Againſt Ships in Diſtreſs, and by Plunderers of W
† 20. In taking, killing, and deſtroying Fiſh.
† 21. By malicious Incendiaries.
† 22. By maliciouſly Shooting at another, and by ſe
threatning Letters.
† 23. By Smugglers.
† 24. By buying and receiving Stolen Goods.
† 25. By taking or adverti ſing a Reward for Stolen Good
† 26. By maliciouſly deſtroying Garments, Hop-binds,
Mine Engines.
† 27. By Deſtroyers of Looms, &c.
† 28. By not performing Quarantine.
† 29. By hindering the Exportation of Corn.
† 30. By return from Tranſportation.
† 31. By Aſſaulting with intent to rob.

In treating hereof I ſhall firſt conſider ſuch points as relate
them all in general, and then deſcend to each crime in particu
in the order before ſet down.

As to what relates to them all in general, I will ſhew,—Firſt
Where an offence ſhall be ſaid to be made felony by ſtatute.—
Secondly. What is incidentally implied in every ſuch ſtatute.

1 Hale 627, 641, 703. B. Cor. 204. 3 Inſt. 91. 2 Inſt. 434. Co. Lit. 391. Hob. 1. 2. 3.

Sect. 1. As to the firſt point it ſeems clear, That not on
thoſe crimes which are made felonies in expreſs words, but a
all thoſe which are decreed to have or undergo judgment of
and member by any ſtatute become felonies thereby, whether
word felony were omitted or mentioned.

Co. Lit 391. Hob 270, 293. 3 Inſt. 146.

Sect. 2. But an offence ſhall never be made felony by
conſtruction of any doubtful and ambiguous words of a ſtatu
and therefore, if it be only prohibited under pain of forfeit
all that a man has, or of forfeiting body and goods, or of be
at the king's will for body, land, and goods, it ſhall amount
no more than a high miſdemeanor, puniſhable by impriſon
ment, &c.

1 Hale 324, 685, 570. Summary 8. 2 Bulſt. 349. Dyer 323. 1 Leon. 295.

Sect. 3. Alſo where a ſtatute makes a ſecond offence fe
lony, or ſubject to a heavier puniſhment than the firſt, it i
always implied, That ſuch ſecond offence ought to be com
mitted after a conviction for the firſt; from whence it fol
lows, That if it be not ſo laid in the indictment, it ſhall be
puniſhed

ed but as the first offence; for the gentler method shall tried, which perhaps may prove effectual.

4. As to the second point, *viz.* What is incidentally 3 Inst. 47, 59, 90.
d in every statute, making an offence felony. It seems 1 Hale 704.
that every such statute does by necessary consequence sub- Crompton 42
e offender to the like attainder and forfeiture, &c. and also Summary 215.
quire the like construction, as to those who shall be ac- Dalis. 11, 22. b. 2.
t accessaries before or after, and to all other intents and c. 29. s. 13, 14.
es, as is incident to a felony at common law. Salk. 542, 543.
Misprision of felony is as well

tal to a felony created by statute, as to one at common law. 1 Hale 652. 2 Hale 708.

5. Yet where such a statute saves the corruption of 3 Inst. 47.
it impliedly saves the descent of the land of the offender Summary 8.
eir. Also where it saves the land to the heir, it prevents
rruption of blood so far. And it is said, That in both
saves the wife's dower, because wherever an heir takes
, he shall not void a title of dower in respect of the same 1 Hale 703.
ance. But notwithstanding such a saving, the land
e forfeited for the life of the offender.

6. If one commit an offence which is made felony by B. Cor. 203.
, and then the statute be repealed, he cannot be punished
lon in respect of that statute.

a full account of this title, vide 4 Bac. Ab. tit. Statute, and the introduction to justice.

HAPTER THE FORTY FIRST.

OF RAPE.

FENCES against Women made felonies by statute are of Bract. c. 28.
two kinds. First, Rape. Secondly, Of forcible, impro- Leges Gul. l. 19.
and clandenstine marriage. 1 Hale, c. 58.
4 Comm. c. 15.

reating of rape, I shall consider, First, What shall be Wilk. Leg. Ang.
a rape. Secondly, How it is punished. Sax. 222, 290.
2 Inst. 433.

1. As to the first point, It seems that rape is an offence
ing unlawful and carnal knowledge of a woman, by force Co. Lit. 123.
gainst her will. But it is said, That no assault upon a wo- 4 Co. 39, 47.
n order to ravish her, howsoever shameless and outrageous 2 Inst. 180.
be, if it proceed not to some degree of penetration, and 12 Co. 37.
emission, can amount to a rape; however it is said, That 3 Inst. 59.
on is, *primâ facie*, an evidence of penetration. 1 Hale 628.
1 St. Tr. 388.
Summary 117.
1 Rush. Coll.
p. 2, 94.

Sect.

Dalt.c.105,607. B. Par. 55. 5 Ed. 4, 6.

Sect. 2. Offences of this nature are not any way mitigated by ſhewing that the woman, at laſt yielded to the violence, or ſuch her conſent was forced by fear of death, or of duress. Nor is it any excuſe, that ſhe conſented after the fact, or that ſhe was a common ſtrumpet; for ſhe is ſtill under the protection of the law, and may not be forced. But it was anciently held to be no rape to force a man's own concubine. Alſo it hath been ſaid by ſome to be no rape to force a woman who conceives at the time; for it is ſaid, That if ſhe had not conſented, ſhe could not have conceived: but this opinion ſeems very queſtionable, not only becauſe the previous violence is no way extenuated by ſuch a ſubſequent conſent, but alſo becauſe, if it were neceſſary to ſhew that the woman did not conceive, the offender could not be tried till ſuch time as it might appear whether ſhe did or not, and likewiſe becauſe the philoſophy of this notion may well be doubted of.

1 Ruſh. Col. part. 2. 100. Bract. 147, 148.

S. P. C. 24. Finch. 204. 1 Hale 628, 731.

Pulton 134. 1 Hale 630, 633. Ruſh. Coll part 2, 100.

Sect. 3. It is a ſtrong, but not a concluſive preſumption againſt a woman, That ſhe made no complaint in a reaſonable time after the fact.

Bract. 147. Dalt. c. 107. 1 Hale, 30. Crom. 100. Dyer 304.

Sect. 4. It was a queſtion before 18 Eliz. c. 7. Whether a rape could be comitted on a child of the age of ſix or ſeven years; but by that ſtatute, "whoſoever ſhall unlawfully and carnally know and abuſe any woman-child under the age of ten years, ſhall ſuffer as a felon without clergy."

Vide Cro. Cir. Com. c. 456. 3 Bur. 1696. C. Car. 332.

Sect. 5. Upon an indictment for this offence, it is no way material whether ſuch child conſented, or were forced; yet it muſt be proved, That the offender entered into her body, &c.

B. 2. c. 29, ſ. 7. 89. Dalt. c. 107. Hutt. 115. St. Tr. 1, 366.

Sect. 6. All who are preſent and actually aſſiſt a rape, or commit a rape, may be indicted as principal offenders, whether they be men or women.

Ruſh. v. 2. p. 93. Vide Lord Baltimore's caſe, 4 Burr. 2179.

1 Hale 627. Bract. 147, 148. S. P. C. 21. 22, 23. 2 Inſt. 181. Dalt. c. 99. Crom. 32. con. Co. Lit. 123. Fleta 1, c. 40. 2 Inſt. 180. Quære F. Url. 49. B. Cor. 169.

Sect. 7. As to the ſecond point, *viz.* How rape is puniſhable, it is ſaid, that of old time it was felony, and conſequently puniſhable with death, eſpecially if the party raviſhed were a virgin, unleſs ſuch virgin would accept of the offender for her husband, in which caſe ſhe might ſave his life by marrying him. But afterwards it was looked upon as a great miſdemeanor only, but not felony; and the offender was puniſhed with the loſs of his eyes and teſticles: And by the ſtatute of *Weſtm.* 1. c. 13. It was reduced to a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine at the king's will. But the ſmallneſs of the puniſhment proving a great encouragement to the offence, it was made felony again, by the ſtatute of *Weſtminſter* 2. c. 34. and by 18 *Eliz.* c. 7. it is excluded from the benefit of clergy.

CH

APTER THE FORTY SECOND.

FORCIBLE, † IMPROVIDENT, AND CLANDESTINE MARRIAGES.

HE marrying a woman of ſubſtance by force, and other offences of the like nature, were made felonies by 3 Hen. . which was enacted in the following words.

. 1. "Where women, as well maidens as widows and s having ſubſtances, ſome in goods moveable, and ſome in s and tenements, and ſome being heirs apparent unto their ſtors, for the lucre of ſuch ſubſtances, be oftentimes taken doers, contrary to their will, and after married to ſuch miſ-doers, or to other by their aſſent, or defiled, to the great leaſure of God, and contrary to the king's laws, and diſ- gement of the ſaid women, and utter heavineſs and diſ- fort of their friends, and to the evil enſample of all other: therefore ordained, eſtabliſhed and enacted by our ſove- n lord the king, by the advice of the lords ſpiritual and poral; and the commons in the ſaid parliament aſſembled, by the authority of the ſame, That what perſon or per- from henceforth, that taketh away any woman (ſo) againſt will unlawfully, that is to ſay, maid, widow, or wife, ſuch taking, procuring, and abetting to the ſame, and alſo eiving wittingly the ſame woman ſo taken againſt her will, knowing the ſame, be felony: And that ſuch miſ-doers, ers, and procurators to the ſame, and receitors, knowing ſaid offence in form aforeſaid, be henceforth reputed and udged as principal felons: Provided alway, that this act end not to any perſon taking any woman, only claiming her his ward or bond-woman."

Vide Kely. 81. and the trial of Haagon Swendzen for forcibly marrying Mrs. Rawlins; Mich, 1 Ann. 5 St. Tr. 450.

. 2. And by 39 Eliz c. 9. "All perſons who ſhall be ncipals, or procurers or acceſſaries before ſuch offence com- ted, are excluded from the benefit of the clergy."

. 3. In the conſtruction of the ſaid ſtatute of 3 Hen. 7. c. following points have been reſolved.—Firſt, That the in- ent muſt expreſsly ſet forth, both that the woman taken away and or goods, or was heir apparent, and alſo that ſhe was ied or defiled, becauſe no other caſe is within the preamble ſtatute, to which the enacting clauſe clearly refers; for it not ſay, That what perſon, &c. that taketh any woman ſt her will, but what perſon that taketh any woman ſo ſt her will.

See 1 Hale, 660, 661, and 5 St. Tr. 468. Far. 101, 102. Hobart 182. C. Car. 483, 485, 488, 492. Dalt. 22. 1 And. 115. 3 Inſt. 61. Summary 118. Savil. 59, 12 Co. 20, 100, 110.

Sect.

Hobart 182. C. Car. 485, 489.

Sect. 4. Secondly, That the indictment ought alſ… ledge, That the taking was for lucre, becauſe the words … preamble are ſo, but that it needs not ſet forth, That … with an intention to marry or defile the party, becauſe the … of the ſtatute neither require ſuch an intention, nor do… want thereof any way leſſen the injury.

Hobart 182. C. Car. 485. 1 Hale 660.

Sect. 5. Thirdly, That it is no manner of excuſe, T… woman at firſt was taken away with her own conſent, b… if ſhe afterwards refuſe to continue with the offender, … forced againſt her will, ſhe may from that time as prop… ſaid to be taken againſt her will, as if ſhe had never gi… conſent at all; for till the force was put upon her, ſhe … her own power.

C. Car. 493. 3 Keb. 193. 2 Vent. 243, 244.

Sect. 6. Fourthly, That is not material whether a … ſo taken away, be at laſt married, or defiled, with her own … ſent or not, if ſhe were under the force at the time, beca… offender is in both caſes equally within the words of the … and ſhall not be conſtrued to be out of the meaning of it, … ing prevailed over the weakneſs of a woman, whom by … means he got into his power.

3 Inſt. 61. Daliſ. 22. S P. C. 44. Far. 132.

Sect. 7. Fifthly, That thoſe who after the fact receiv… offender, but not the woman, are not principals within … ſtatute, becauſe the words are, *receiving wittingly the ſame man ſo taken*, &c. but it ſeems clearly, That they are … ries after the offence, according to the known rules of co… law.

C. Car. 482. Summary 119.

Sect. 8. Sixthly, That thoſe who are only privy to the … riage, but no way parties to the forcible taking away, or … ſenting thereto, are not within the ſtatute.

C. Car. 488. Hobart 183. Summary 119.

Sect. 9. Seventhly, That where a woman is taken by … in the county of *A.* and married in the county of *B.* the offe… may be indicted and found guilty in the county of *B.* bec… the continuing of the force there amounts to a forcible … within the ſtatute. (1)

(1) A woman thus taken away, and forcibly married, may give evidence againſt the … fender, for he is no huſband *de jure*. 1 Hale 661. 4 St. Tr. 455. 4 Comm. … Gibſ. 418.

† *Sect.* 10. Secondly, As to the improvident marriage … enacted by 4 & 5 Phil. & Mar. c. 8. "That whoever above … "age of fourteen (by flattery, trifling gifts, and fair promi… "ſhall allure and take any woman-child unmarried within … "age of ſixteen, from and againſt the conſent of her guardi… "ſhall ſuffer two years impriſonment, and fine at diſcre… "If the offender deflower, or marry her, five years im… "ſonment, and fine as before: and if any female above two… "ſhall conſent to unlawful matrimony, ſhe ſhall forfeit …

nds to the next of kin, during the life of such person as so contract matrimony." (2)

. B. This forfeiture extends as well to the infant who consents, as to the husband es. Brown's cases Mich. 19 Geo. 3. The marriage must be clandestine, and to arragement of the heirefs. 3 Mod. 84. If the guardian once consents, he cannot 2 Mod. 128. 6 Mod. 168. A bastard under the care of her putative father, is this act. Str. 1162. The offence is within the jurisdiction of the king's bench. 145. 2 Lev. 179. 1 Sty. 162. See also 12 Car. 2. c. 24. 3 Mod. 24. Vaugh And that the court will grant an information for procuring an improvident or un- parriage. Lev. 257. 5 Mod. 221.

Sect. 11. Thirdly, As to clandestine marriage. It is d by 26 Geo. 2. c. 33. "That if any person shall so- nize matrimony, except the parties are quakers or Jews, in other place than a church or public chapel, where banns e been usually published, unless by special licence from archbishop of Canterbury; or shall solemnize matrimony hout publication of banns, unless licence of marriage be had and obtained from some person or persons having au- rity to grant the same, he shall be guilty of felony, and nsported for fourteen years, and the marriage be null and d." The prosecution to be within three years.

Sect. 12. And it is further enacted, par. 16. "That if person shall, with intent to elude the force of this act, owingly and wilfully insert or cause to be inserted in the re- ter book of such parish or chapelry as aforesaid, any false ry of any matter or thing relating to any marriage; or false- make, alter, forge, or counterfeit any such entry in such gister, or any such marriage licence, or shall wilfully de- oy any register book of marriages, or any part of such re- ter book, or shall cause the same to be done, or shall assist so doing, or shall knowingly utter or publish the same as ue respectively, every person so offending, shall suffer death ithout clergy."

Vide Douglas 659, for a determination on this statute, which renderedallmarriages illegal which had been celebrated during the space of 28 years in any churchor chapel built subsequent to the passing of the act. But by 21 Geo. 3. c. 53. are rendered valid, and the clergymen who had celebrated such marriages are ex- ed from the penalties. Vide also upon this subject. Bur. 2230. 1 Black. 632. Ray. Salk. 18, 28, 121. 2 Sid. 71.

CHAPTER THE FORTY-THIRD.

OFFENCES AGAINST THE RIGHTS OF MARRIAGE.

OFFENCES against the rights of marriage, at com- mon law, are looked upon as spiritual offences, and pu- nable only by the Ecclesiastical law, but one of them is de felony, but not excluded from the benefit of the clergy. C. Eliz. 94.

By

By 1 Jac. 1. c. 11. it is enacted, "That if any per
"persons within his majesty's dominion of England and
"being married, do marry any person or persons, the
"husband or wife being alive, that then every such offence
"be felony, and the person or persons so offending shall
"death as in cases of felony. And the party and parties
"fending, shall receive such and the like proceeding
"and execution, in such county, where such person or pe
"shall be apprehended, as if the offence had been comm
"in such county, where such person or persons shall be
"apprehended."

Sect. 2. But it is provided by the said statute, "That
"thing therein contained, shall extend to any person or pe
"whose husband or wife shall be continually remaining be
"the seas by the space of seven years together, or whose hu
"or wife shall absent him or herself, the one from the other,
"the space of seven years together in any parts within his
"jesty's dominions, the one of them not knowing the oth
"be living within that time."

Sect. 3. And it is further provided, "That the said
"shall not extend to any person or persons who shall be
"time of such marriage divorced by sentence in the eccle
"cal court, or to any person or persons where the former
"riage shall be by sentence in the ecclesiastical court dec
"to be void and of no effect: Nor to any person or per
"for, or by reason of, any former marriage had or made
"in age of consent."

Sect. 4. Also it is farther provided, That no attainder
"this offence shall make or work any corruption of blood,
"of dower, or disinherison of heir or heirs."

See 1 Hale, 692, to 694.
3 Inst. 89.
Sum. 121, 122.
Kely. 27.
2 C. Car. 461, 462.

Sect. 5. In the construction of this statute it has been hold
First, That not only those who are divorced *a vinculo matri*
nii, but also those who are divorced only *a mensa &*
causa adulterii or *sævitiæ*, are within the exception in this
tute, notwithstanding there be not the word *divortiamus*, but
ly the word *separamus*, in the sentence; because the statu
being penal, shall be construed favourably, and such sepa
tions are taken for divorces in common understanding.

3 Inst. 89.
1 R. Abr. 340, 141.
Co. Lit. 79.

Sect. 6. Secondly, Where either of the parties were wit
the age of consent at the time of the first marriage, that not o
such person as was within such age, but also the other who
above it, is within the exception of the statute, because the pe
er of disagreeing to such marriage is equal on both sides.

1 Hale 692.
1 Sid. 171.

Sect. 7. Thirdly, That if the first marriage were beyo
sea, and the latter in England, the party may be indicted for
be

ecauſe it is the latter marriage that makes the offence; he firſt marriage were in England, and the latter beyond is ſaid that the offender cannot be indicted here;—*ſed* why not? for the words of the ſtatute are, "That the Kely. 80. es ſo offending ſhall receive ſuch and the like proceeding, and execution, in ſuch county where ſuch perſon or ons ſhall be apprehended, as if the offence had been com- ed in ſuch county, where ſuch perſon or perſons ſhall be n or apprehended.' (1)

n this ſtatute the firſt and true wife is not an admiſſable witneſs againſt her huſ- 1 Hale 692. Even an affidavit made by the firſt wife to poſtpone the trial of an ent againſt her huſband has been rejected. O. B. Feb. 1786. But vide Adding. 11. But the ſecond woman is competent, even to prove the marriage, for ſhe is wife ſo much as *de facto*. 1 Hale 693. A ſecond huſband, not being privy to marriage, is intitled to the labour of the ſuppoſititious wife during their cohabita- 4 Geo. 1. Burn's E. L. 106.

pril, 16 Geo. 3. the Dutcheſs of Kingſton was tried for polygamy by the houſe of It was reſolved a ſentence in the eccleſiaſtical court againſt a marriage, in a ſuit titation does not preclude the crown from proving the marriage on an indictment ſtatute. And, admitting that ſuch a ſentence were concluſive as to the fact of ge, the crown may avoid the effect of the concluſion by giving evidence that the e had been obtained by fraud and colluſion. 11. St. Tr. 262.

HAPTER THE FORTY-FOURTH.

OFFENCES AGAINST THE MEMBERS OF A MAN's BODY.

treating of offences againſt the members of a man's body, ſhall conſider, Firſt, What offences of this nature are eſ- ed maims. Secondly, How they are puniſhed by the com- law. Thirdly, How they are puniſhed by ſtatute. Fleta l. 1. c. 40. Brit. b. 1, c. 25. Bract. 144. 4 Comm. 205.

. 1. As to firſt point, It ſeems that ſuch a hurt of any of a man's body, whereby he is rendered leſs able in fighting, r to defend himſelf or annoy his adverſary, is properly n. S. P. C. 3. 3 Comm. 12. Co. Lit. 126, 128. 3 Inſt. 62, 118,

. 2. And therefore the cutting off, or diſabling, or kening a man's hand or finger, or ſtriking out his eye or tooth, or caſtrating him, are ſaid to be maims, but the cut- off his ear, or noſe, &c. are not eſteemed maims, becauſe do not weaken, but only diſfigure him. F. Cor. 142, 458. 25 Ed. 3. 94. 4 Comm. 206.

. 3. As to the ſecond point, *viz.* How ſuch offences to be puniſhed, it is to be obſerved, that all maim is felo- and it is ſaid, That anciently caſtration was puniſhed death, and other maims with the loſs of member for mem- but afterwards no maim was puniſhed in any caſe with the Bract. 144. Fleta l. 1. c. 40. S. P. C. 37. 3 Inſt. 62, 118. Sum. 133. Str. 1100. And. 137.

the loſs of life or member, but only with fine and imprison (1)

(1) A perſon who maims himſelf that he may have the more colour to beg, may be indicted and find. 1 Inſt. 127. And by the like reaſon a perſon who diſables himſelf that he may not be impreſſed for a ſoldier. 3 Burn. J. 115.

Sect. 4. As to the third point, *viz.* How ſuch offences
See 5 H. 4. c. 5. puniſhed by ſtatute, it is enacted by 22 & 23 Car. 2.
See 37 H. 8, c. 6. "That if any perſon ſhall on purpoſe and of malice forethought
"and by lying in wait, unlawfully cut out, or diſable
"tongue, put out an eye, ſlit the noſe, cut off a noſe,
"or cut off or diſable any limb, or member of any ſubject
"his majeſty, with intention in ſo doing to maim or diſfigure
"in any the manners before mentioned, ſuch his majeſty's
"ject, That then and in every ſuch caſe the perſon or perſons
"ſo offending, their counſellors, aiders, and abettors, knowing
"ing of, and privy to the offence, as aforeſaid, ſhall be ad
"by the ſaid ſtatute declared to be felons, and ſhall ſuffer death
"as in caſes of felony, without benefit of clergy."

Sect. 5. But it is provided by the ſaid ſtatute, "That
"attainder of ſuch felony ſhall extend to corrupt the blood
"forfeit the dower of the wife, or the lands, goods or chattels
"of the offender."

Sect. 6. If a man attack another of malice fore-thought
Woodburn and Coke's Caſe at the Suffolk aſſizes, 8 Geo. 1. 6 St. Tr. 212. See 9 Geo. 1. c. 22.
in order to murder him with a bill, or any other ſuch like inſtrument, which cannot but endanger the maiming him, and
ſuch attack happen not to kill, but only to maim him, he may
be indicted on this ſtatute, together with all thoſe who were
abettors, &c. and it ſhall be left to the jury on the evidence
whether there were a deſign to murder by maiming, and conſequently a malicious intent to maim as well as to kill, in which
caſe the offence is within the ſtatute, though the primary intention was murder. (2)

(2) If the maim comes not within any of the deſcriptions of the act, yet it is indictable at common law, and may be puniſhed by fine and impriſonment. Or an appeal may be brought for it at the common law; in which the party injured ſhall recover his damages. Or he may bring an action of treſpaſs; which kind of action hath now generally ſucceeded the place of appeals in ſmaller offences not capital. Vide poſt, 2, vol. 15. But it does not ſeem that in maiming there may be acceſſaries after the fact. Ibid. p.

† *Sect.* 7. And it is enacted by 37 Hen 8. c. 6. "That
For offences of maiming cattle, vide Infra. ch. 46.
"whoever ſhall maliciouſly, unlawfully, and wittingly cut or
"cauſe to be cut off the ear or ears of any one of the king's ſubjects otherwiſe than by authority of the law, chance-medley,
"ſudden affray, or adventure ſhall forfeit treble damages to the
"party grieved, by action of treſpaſs, and ten pounds to the
"king, in the name of a fine."

CHA

CHAPTER THE FORTY-FIFTH.

OFFENCES AGAINST RECORDS.

T common law the embezzling, defacing, or altering any record, without due authority, was an offence high-uniſhable by fine and impriſonment, &c. and in many it was made felony by the following clauſe of 8 Hen. 6. 2. 3 Inſt. 71, 72. 1 Hale 646, to 648.

. 2. "It is ordered, That if any record or parcel of the ne, writ, return, panel, proceſs, or warrant of attorney, the king's courts of Chancery, Exchequer, the one Bench the other, or in his Treaſury, be willingly ſtolen, taken ay, withdrawn, or avoided, by any clerk, or by other ſon, becauſe whereof any judgment ſhall be reverſed: at ſuch ſtealer, taker away, withdrawer, or avoider, their curators, counſellors, and abettors, thereof indicted, and proceſs thereupon made, thereof duly convict by their n confeſſion, or by inqueſt to be taken of lawful men, hereof the one half ſhall be of the men of any court of the ne courts, and the other half of the other) ſhall be judged felons, and ſhall incur the pain of felony: And that the ges of the ſaid courts, of the one Bench or of the other, ve power to hear and determine ſuch defaults before them, thereof to make due puniſhment, as afore is ſaid."

. 3. In the conſtruction of this clauſe, it hath been n: Firſt, That it extends only to the courts which are ex-ly named; and to the court of Chancery, ſo far only as oceeds according to the courſe of the common law. 3 Inſt. 71. 1 Hale 646, to 648.

. 4. Secondly, That it extends not to ſuch offence by judges of any court; for whereas it begins with expreſsly g clerks which are inferior to them, it ſhall not be in-d to include them under the general words following; ver by 8 Ric. 2. c. 4. "Judges as well as clerks are to a fine to the king, and make ſatisfaction to the party falſly entering pleas or raſing rolls, or changing verdicts, the diſheriſon of any one." And they are highly puniſh-at common law for other offences of like nature, as for ting a bill of indictment not found by the jury among which were found, and ſuch like. And juſtice *Hengham* e reign of *Edward* the Firſt was fined eight hundred marks, raſing a fine of thirteen ſhillings and four pence ſet on a man, and making it ſix ſhillings and eight pence. 3 Inſt. 72. 2 R. 3, 10. 3 Mod. 66. B. Cor. 174. B. Treſp. 31. Con. B. preſent 23 indict. 14, 50. 3 Inſt. 72.

Sect. 5. Thirdly, That not only ſuch an alteration by a judgment is actually reverſed, but alſo ſuch whereby reverſible, whether it were made before or after the judg was given, or whether it be or be not afterwards amen
2 Roll. 81. by the court, is within this act; for thoſe words in the tute *whereby any judgment ſhall be reverſed*, are taken to have ſame purport, as if it were ſaid, whereby any judgment be annulled, or loſe its force or effect; for it is plain, the ſtatute cannot intend that the judgment muſt be act reverſed by writ of error, becauſe it ſpeaks of ſtealing or rying away, or avoiding of records, which makes it impo ble that the judgment ſhould be reverſed at all, becauſe writ of error can remove a judgment which appears not. it has been holden, That if *A. B.* be outlawed by the name
2 R. 3. 10. S. P. C. 36. 3 Inſt. 72. 11 Rep. 34. *A. C.* and afterwards the record be raſed, and *A. B.* infer the offence is within the ſtatute, becauſe the record a *A. C.* is annulled, and the judgment prevented, which have been given on a writ of error for this defect.

Sect. 6. Fourthly, If the offence were committed
2 R. 3. 10, 11. S. P. C. 36. 3 Inſt. 73. in one county and partly in another, but not ſo as to amou a compleat offence within the ſtatute in either, That the cannot be indicted for a felony, becauſe the counties cannot in an indictment, and that which is done in one cannot be in another, but that he may be indicted for a miſpriſion in e county.

Sect. 7. Fifthly, That the act, by making thoſe who
3 Inſt. 72. Con. S. P. C. 44. acceſſary before the fact principal felons, does not mean way to favour thoſe who are acceſſary after, but to leave to the general conſtruction of the law.

Sect. 8. Sixthly, That by the laſt clauſe of the act,
3 Inſt. 73. juſtices of either bench have a concurrent authority, and they which ſhall firſt enquire ſhall proceed; and that if the fence were committed in the county where the benches they need no other commiſſion; but if it were done in an
3 Inſt. 72. 2 R. 3. 11. county, that they muſt have a ſpecial commiſſion: And London, that they ſhall have a commiſſion in which the ſhall be omitted, for the charters of the city, which re that he ſhall be a principal in every commiſſion, extend ſuch cauſes which are ſpecially limited to particular judges.

Sect. 9. By 21 *Jac.* 1. c. 26. "It is made felony "out the benefit of clergy, but not ſo as to corrupt the "to acknowledge or procure to be acknowledged, any "recovery, deed inrolled, ſtatute, recognizance, bail, or "ment in the name of any other perſon or perſons not "or conſenting to the ſame.

2 Jon. 64. *Sect.* 10. In the conſtruction hereof it has been hol That if a man perſonate another in the county of *A.* in ting in bail before a judge, and the bail be filed in the co

the trial ſhall be in the county of *A.* Alſo it ſeems the perſonating of bail before a judge is no felony, unleſs the be filed; † and if it be not filed the (a) acknowledging of in another name makes not felony, but a miſdemeanor (1)

Contra in the report of the ſame caſe. 1 Ven. 301, 302.

(a) 1 Hale 696.

† Two people put in bail in feigned names in the Common Pleas, and becauſe there no ſuch *perſons*, they could not be proſecuted for perſonating bail on this ſtatute; he court ordered them and the attorney to be ſet in the pillory, which was done ac-gly. Strange 384.

. 11. Alſo it is enacted by 4 & 5 Will. & Mar. c. 4. at any perſon or perſons who ſhall before any commiſſioner thorized to take bail, by virtue of the ſaid ſtatute, in acti- depending in the courts of King's Bench, Common Pleas, Exchequer, repreſent, or perſonate any other perſon or ſons, whereby the perſon or perſons ſo repreſented and ſonated, may be liable to the payment of any ſum or ſums money, or debt, or damages to be recovered in the ſame t or action, wherein ſuch perſon or perſons are repreſented d perſonated, as if they had really acknowledged and enter- into the ſame, being lawfully convicted thereof, ſhall be judged felons."

4 Blac. Com. 128.

CHAPTER THE FORTY-SIXTH.

OFFENCES relating to CATTLE.

Y 22 & 23 Car. 2. c. 7. it is made felony, "Malici- "ouſly, unlawfully, and willingly, to kill or deſtroy any rſes, ſheep, or other cattle of any perſon or perſons what- ever in the night-time, but liberty is given to the offender avoid judgment of death, by chuſing judgment of tranſ- rtation for ſeven years; and any three juſtices of peace r the county, diviſion, city, town corporate, or place, hereof one to be of the quorum, are authoriſed to enquire well by the oaths of twelve lawful men of the ſame unty, as by examination of witneſſes upon oath, or by y lawful ways or means, which to them ſhall ſeem meet, the ſaid offences, and in order thereunto to iſſue out war- nts, as well for the ſummoning of jurors, as for the ap- rehending of all perſons, who ſhall or may be ſuſpected hereof, and to take their examination touching the ſame, alſo to cauſe all ſuch other perſons as to them ſhall ſeem kely to make diſcovery thereof, to appear before them, nd to give information upon oath concerning their know- edge of the premiſſes, ſo as no perſon ſo to be examined all in any wiſe be proceeded againſt for any offence con- erning which he ſhall be ſo examined as a witneſs, and

"shall upon such his examination make a true discovery
"And if any person who shall be thought likely to
"such discovery, being summoned by the said justices,
"fuse to appear, or to be examined as a witness, he
"be committed by the said justices to the county gaol,
"he shall submit to be examined. Provided, That no
"son shall be questioned for any offence against the
"unless he be proceeded against within six months after
"offence committed."

For the surrender clause to which offenders against this act are liable, vide post. c. 49. s. 3. and it is at the option of the prosecutor in what court he will prosecute upon this act.

† *Sect.* 2. And it is enacted by the Black Act, 9 Geo. 1. c. 22. That if any person or persons shall unlawfully and maliciously kill, maim, or wound any cattle; (1) or shall forcibly rescue any person in lawful custody for the same; or shall by gift, or promise of money, or other reward, procure any of the king's subjects to join him or them in such unlawful act, every person so offending shall suffer death, without the benefit of clergy. And by 27 Eliz. c. 13. the hundred are liable to the amount of 200*l.*

Black. 733.

(1) On an indictment upon this statute, for killing *a mare* and *a stone colt*, it was objected in arrest of judgment. First. That the word cattle did not necessarily include *horses, mares, and colts*. And Secondly, That the mare and colt were not averred to be cattle within the statute. The judges unanimously agreed, that, as the 22 & 23 Car. c. 7. had made the offence of killing horses by night a single felony, the 9 Geo. 1. c. was to be considered as an extension of that act, and the offender had judgment of death. 2 Black. 722. 1 Burn. 228.

O. B. 1785. No. 32. Ibid. No. 376.

† *Sect.* 3. And it is further enacted by 14 Geo. 2. c. explained by 15 Geo. 2. c. 34. That whoever shall felon drive away, or in any other manner feloniously steal, one more, sheep, bull, cow, (2) ox, steer, bullock, heifer, calf lamb, but no other cattle whatsoever; or shall wilfully the same with a felonious intent to steal the whole carcase any part thereof; or shall assist or aid to commit the fence, shall suffer death without benefit of clergy.—And par. 2. a reward of 10*l.* shall be paid by the sheriff for and convicting the offenders.

(2) At Warwick summer assizes, 1774. Cooke was indicted upon this statute for ing a *cow*, on the evidence it appeared to be a beast of the ox kind, called *a bisse*; having had a calf. All the judges (absente De Grey, C. J.) were of opinion, word heifer is mentioned in the act in contradistinction to a cow; and, therefore, the evidence did not support the indictment. M. S.

† *Sect.* 4. And by the 37 Hen. 8. c. 6. whoever shall liciously, unlawfully, and willingly cut out, or cause to out the tongue or tounges of any tame beast or beasts other person or persons, the said beast then being in life, forfeit treble damages to the party grieved, by action of and ten pounds to the king, in the name of a fine. (3)

(3) By 9 Geo. 3. c. 39. s. 10. The crown is empowered to prevent the import cattle, in order to avoid the danger of introducing a contageous distemper. And Geo. 3. c. 67. Regulations and penalties are imposed to prevent the mischiefs which arise from the improper driving of cattle through the streets within the bills of mor And for further particulars vide 18 Car. 2. c. 2. 20 Car. 2. c. 7. 32 Car. 2 & Geo. 3. c. 10.

Sect. 5. But the practice of ſtealing horſes, cows, &c. Preamble.
ly increaſing, owing to the facility with which they are
ſed of to perſons who keep places for ſlaughtering: it is
ted by the 26 *Geo.* 3. *c.* 71. "that no perſon ſhall uſe any Perſons keeping
ace, for ſlaughtering any horſe, mare, gelding, colt, filly, a ſlaughter
, mule, bull, ox, cow, heifer, calf, ſheep, hog, goat, or houſe, to take
her cattle, not be killed for butchers meat, without firſt ta- out a licence,
ng out a licence, at the general quarter ſeſſions; which ſhall &c.
ly be granted upon a certificate, under the hands and ſeals
the miniſter and churchwardens, or overſeers, or the mi-
ſter and two ſubſtantial houſeholders of the pariſh, that the
rſon to be licenſed is fit to be truſted with ſuch buſineſs:
hich licence in caſe of death, ſhall be effectual to the wi-
w, or perſonal repreſentative of ſuch perſon until the then
xt enſuing general quarter ſeſſions."

Sect. 6. "And every ſuch licence ſhall be ſigned by the juſtices
ſeſſions, and a copy entered in a book by the clerk of the Perſons licenced
ace, for every perſon to ſearch.—And perſons ſo licenſed to affix to their
all affix over the door where they carry on the buſineſs, houſes the words
HEIR NAMES with the words LICENCED FOR SLAUGH- herein men-
ERING HORSES, PURSUANT TO AN ACT PASSED IN THE tioned.
WENTY-SIXTH YEAR OF HIS MAJESTY KING GEORGE
HE THIRD."

Sect. 7. "And every occupier of ſuch licenſed ſlaughtering Previous notice
ouſe ſhall, ſix hours previous to the killing any cattle, not to be ſent when
illed for butchers meat, and previous to the fleaing any horſes, &c. are
ttle, brought there dead, give notice, in writing, to the in- intended to be
pector, that he may, take the heighth, age, colour, and par- ſlaughtered, to
cular marks of every horſe, mare gelding, foal or filly, aſs the inſpector,
r mule, and the colour and particular marks of every cow, who is to take
ull, heifer, ox, calf, ſheep, hog, goat, or other cattle, brought an account of
ive or dead for the purpoſes aforeſaid.—And no cattle ſhall the beaſts.
e ſlaughtered, &c. but between eight in the morning and Times of
our in the evening, from *October* to *March*; and between ſlaughtering,
x in the morning and eight in the evening, from *April* to &c.
eptember."

Sect. 8. And further, "that every perſon ſo licenſed, ſhall Accounts to be
nter the name, place of abode and profeſſion of the owner kept, by the
nd of the perſon who ſhall bring the ſame, and the reaſon owners of
hy the ſame is brought, for the examination of the in- ſlaughtering
pector.—And ſuch licenſed perſon ſhall attend with ſuch houſes, of the
ntry, before any one juſtice for the county, or place when owners of the
equired, and ſhall likewiſe produce the ſame at every quarter cattle brought,
eſſions." &c.

Sect. 9. And "that pariſhioners, intitled to chuſe pariſh Veſtry to ap-
fficers, ſhall, annually, or oftener, appoint one or more per- point inſpec-
ons to inſpect every ſuch ſlaughtering houſe, and take ſuch tors.
ccount there as before directed; and make an entry thereof

"for

Inſpectors duty.

" for public inſpection. And the inſpector ſhall affix over
" door, HIS NAME, and INSPECTOR OF HOUSES AND PLA
" FOR SLAUGHTERING HORSES.—In caſe ſuch inſpector
" reaſon to believe, that ſuch cattle, is in a ſerviceable ſtate,
" be ſtolen, or unlawfully come by, he ſhall prohibit the ſlau
" tering for eight days; and cauſe an advertiſement to be inſe
" ed in ſome publick newſpaper circulated in the country, o
" or oftener, unleſs the owner ſhall ſooner claim the ſame,
" otherwiſe ſatisfactorily inform the inſpectors, that they ſent
" cattle, to be ſlaughtered.—The expence to be paid by the
" cupier of the ſlaughtering houſe, and on refuſal, and convict
" on the oath of the inſpector, before one juſtice, he ſhall forf
" double."

Inſpectors may viſit ſlaughtering houſes at all times.

Sect. 10. And, par. 6. " Every inſpector in the day, and
" the night, in the preſence of a conſtable, may inſpect
" ſlaughtering houſe."

Perſons bringing cattle refuſing to give an account of themſelves, &c. may be carried before a juſtice.

Sect. 11. And par. 7. " If any perſon ſhall offer to ſale,
" bring any cattle to any ſuch ſlaughtering houſe, and ſhall
" be able, or refuſe to give a ſatisfactory account how the ſa
" came into their poſſeſſion; or if there ſhall be reaſon to ſ
" pect that ſuch cattle are unlawfully obtained, he may be
" veyed before a juſtice; and if ſuch juſtice ſhall ſuſpect
" ſuch cattle are unlawfully obtained, he ſhall commit ſuch p
" ſon, not exceeding ſix days, to be further examined; and
" upon either examinations, ſuch juſtices ſhall be ſatisfied,
" ſuch cattle are illegally obtained, the juſtice ſhall commit
" offender to the common goal or houſe of correction, to
" dealt with according to law."

Perſons ſlaughtering horſes, &c. without licence, &c. guilty of felony.

Sect 12. " And if any perſon keeping ſuch houſe, ſh
" ſlaughter any cattle, other than for butchers meat, or ſh
" flea any cattle, brought dead, without ſuch licence, or giv
" notice as aforeſaid, or ſhall kill, or ſlay the ſame, other
" within the hours limited, or ſhall not delay ſlaughtering,
" cording to the direction of ſuch inſpector, each perſon
" offending ſhall be guilty of A FELONY, and puniſhed by
" and impriſonment, and ſuch corporal puniſhment, publick
" private whipping, or ſhall be tranſported not exceeding ſe
" years, as the court ſhall direct."

Perſons deſtroying hides, &c. to be deemed guilty of miſdemeanors.

Sect. 13. " If any perſon keeping ſuch houſe ſhall, immed
" in lime, or any preparation thereof, or rub therewith, or w
" any other corroſive matter, or deſtroy or burn the hide
" ſkins of any cattle by him ſlaughtered, killed, or ſlayed, or ſh
" be guilty of any offence againſt this act, for which no puni
" ment is expreſsly provided, ſuch perſon ſhall be guilty of
" MISDEMEANOR."

CHA

APTER THE FORTY-SEVENTH.

F OFFENCES BY PURVEYORS.

NCIENTLY the king's court was ſupplied with neceſſa-
ries from the ancient demeſnes of the crown, which were
red for that purpoſe, and in reſpect thereof the tenants of 2 Inſt. 453.
lands had many privileges, which they ſtill enjoy; but
method being found to be troubleſome and inconvenient,
y degrees diſuſed, and afterwards the king uſed to appoint
in officers to buy in proviſions for his houſhold, who were
d purveyors, and claimed many privileges by the preroga-
f the crown, and ſeem to have had the pre-emption of all
victuals as were brought by any one to ſell again. Noy 101.

t. 2. By *magna charta*, chapter 21. "The king ſhall 28 E. 1. c. 2.
take the timber of any perſon againſt his will, and by ma- 36 E. 3. c. 2, 3,
ſubſequent ſtatutes, ſeveral offences of purveyors were 4, 5, 6.
de felonies, as if they took things above the value of twelve 5 E. 3. c. 2.
nce againſt the will of the owner without warrant, or with- 2 Inſt. 82.
t ſuch appraiſement as was directed by thoſe ſtatutes, or Dalt. c. 107.
ithout paying for them, *&c.* Crom. 48.
1 Bulſt. 96, 97.

t. 3. But theſe laws having been found by experience
o have ſufficiently provided againſt the oppreſſions of *perſons* Moor 762, 770,
yed for making proviſions for the king's houſhold, carriages, and 778.
purveyance for his majeſty, and ſeveral counties having Noy 101.
d themſelves obliged to ſubmit to ſundry rates and taxes,
compoſitions to redeem themſelves from ſuch vexations and
reſſions, as it is recited by 12 Car. 2. c. 24. ſ. 12. it was
ted by the ſaid ſtatute, "That from thenceforth no ſum or 1 Hale 644.
ms of money, or other thing ſhall be taken, raiſed, taxed,
ted, impoſed, paid, or levied, for or in regard of any pro-
ſion, carriages, or purveyance for his majeſty, his heirs or
ucceſſors."

t. 4. And it it farther enacted by the ſaid ſtatute, par. 13. 1 Comm. 287.
That no perſon or perſons by any warrant, commiſſion, or 4 Comm. 116
uthority under the great ſeal, or otherwiſe by colour of buy-
ng or making proviſion or purveyance for his majeſty, or
ny queen of England for the time being, or of any of the chil-
ren of any king or queen of England for the time being,
r that ſhall be, or for his, their, or any of their houſhold,
hall take any timber, fuel, cattle, corn, grain, malt, hay,
raw, victual, cart, carriage, or other thing whatſo-
ver, of any the ſubjects of his majeſty, his heirs or ſuc-
ceſſors, without the free and full conſent of the owner or

"owners

" owners thereof, had and obtained without menace, or
" forcement; nor ſhall ſummon, warn, take, uſe, or require
" the ſaid ſubjects to furniſh or find any horſes, oxen, or
" carts, ploughs, wains, or other carriages, for the uſe of
" majeſty, his heirs or ſucceſſors, or of any queen of Eng
" or of any child, or children of any of the kings or queens
" England for the time being, for the carrying the goods of
" majeſty, his heirs or ſucceſſors, or the ſaid queens, or
" dren, or any of them, without ſuch full and free conſent
" aforeſaid; any law, ſtatute, cuſtom, or uſage to the contr
" notwithſtanding."

Sect. 5. And it farther enacted, par. 14. " That no
4 Comm. 417, 432. " emption ſhall be allowed or claimed in the behalf of his
" jeſty, or of any of his heirs or ſucceſſors, or of any of
" queens of England, or of any of the children of the royal
" mily, for the time being, in market or out of maket, but
" it be free to all and every the ſubjects of his majeſty, to
" diſpoſe, or employ his ſaid goods to any other perſon or
" ſons, as him liſteth; any pretence of making proviſion or
" veyance of victual, carriages or other thing for his maj
" his heirs, or ſucceſſors, or of the ſaid queens, or children
" any pretence of pre-emption in their, or any of their ho
" notwithſtanding. And if any perſon or perſons ſhall make
" viſion or purveyance for his majeſty, his heirs or ſucceſſors
" any the queens, or children aforeſaid, or impreſs, or take
" ſuch carriages, or other things aforeſaid, on any pretence
" colour of any warrant aforeſaid, under the great ſeal, or
" wiſe contrary to the intent hereof, it ſhall be lawful for
" juſtices of peace, or ſuch two or one of them as dwell
" and to the conſtables of ſuch pariſh or village where ſuch
" caſion ſhall happen, at the requeſt of the party grieved,
" commit, or cauſe to be commited, the party or parties ſo
" ing and offending, to goal, till the next ſeſſions, there to
" dicted and proceeded againſt for the ſame, *&c.*

Sect. 6. But this abſolute and univerſal reſtraint of all
1 Comm. 287. 4 Comm. 116, 417, 432. Both theſe acts are expired, vide 11 & 12 Will. 3. c. 13. of purveyance having been found by experience inconvenient,
was enacted by 13 & 14 Car. 2. c. 20. which has been often
tinued by ſubſequent ſtatutes, that the officers of the navy
preſs carriages for the uſe of his majeſty's navy and ord
according to the regulations preſcribed by that ſtatute, and
like was enacted by 1 Jac. 2. c 10. in relation to the king's
al progreſſes, *&c.*

CHA

HAPTER THE FORTY-EIGHTH.

OFFENCES BY SOLDIERS AND MARINERS.

FFENCES by ſoldiers or mariners, made felony by ſtatute, are of three kinds.—Firſt, Wandering without a teſtil.—Secondly, Departing from the king's ſervice without ce.—Thirdly, Deſtroying a ſhip.

ct. 1. The firſt of theſe depends upon 39 Eliz. c. 17. by it is enacted, "That all idle and wandering ſoldiers or rines, or idle perſons which ſhall be wandering as ſoldiers marines, ſhall ſettle themſelves in ſome ſervice, labour, other lawful courſe of life, without wandering, or other- ſe repair to the places where they were born, or to their elling places, if they have any, and there remain, betaking emſelves to ſome lawful trade or courſe of life, as afore- d; upon pain, That all perſons offending contrary to this , ſhall ſuffer as in caſe of felony, without clergy."

This ſanguinary law, ſays Sir Will. Blackſtone though in practice deſervedly antiquated ſtill remains a diſgrace to our Statute Book.

ct. 2. And it is farther enacted, "That every idle and ndering ſoldier or mariner, which, coming from his captain m the ſeas, or from beyond the ſeas, ſhall not have a timonial under the hand of ſome one juſtice of the peace, or near, the place where he landed, ſetting down therein place and time, where and when he landed, and the place his dwelling or birth, unto which he is to paſs as aforeſaid, d convenient time therein limited for his paſſage, or hav- ch teſtimonial, ſhall wilfully exceed the time therein limited, ove fourteen days: And alſo, as well every ſuch idle and ndering ſoldier or mariner, as every other idle perſon wan- ering, as ſoldier or mariner, which ſhall at any time here- ter forge or connterfeit any ſuch teſtimonial, or have with im or them any ſuch teſtimonial forged, or counterfeited as oreſaid, knowing the ſame to be counterfeited or forged, all theſe caſes, every ſuch act or acts to be felony, and the fenders to ſuffer, as aforeſaid, without any benefit of clergy."

ct. 3. And it is farther enacted, "That it ſhall be wful for the juſtices of aſſizes, juſtices of goal-deli- ery, and the juſtices of peace of every county, and all uſtices of peace in towns corporate, having authority to ear and determine felonies, to hear and determine all ſuch ffences in their general ſeſſions, and to execute the offen- lers, which ſhall be convicted before them, as in caſes of

"felony

" felony is accuſtomed, except ſome honeſt freeholder, &c.
" take ſuch offender into his ſervice for one whole year,
" alſo be bound by recognizance of ten pounds, to keep the
" perſon for one whole year, and bring him to the next ſe
" for the peace and gaol delivery next enſuing after the
" year; and if any ſuch perſon ſo retained, depart within
" year, without the licence of him that ſo retained him,
" to be indicted, tried, and judged as a felon, and not to
" the benefit of the clergy."

Sect. 4. But it is provided by the ſaid ſtatute, " That
" ſuch idle and wandering perſon, as aforeſaid, ſhall happen
" fall ſick by the way, ſo that by reaſon of his weakneſs he
" not travel to his journey's end within the time limited w
" his teſtimonial, no ſuch perſon to be within the danger o
" ſtatute, ſo as he ſettle himſelf in ſome lawful courſe of
" as aforeſaid, or repair as aforeſaid, to the place where he
" born, or was laſt abiding, within convenient time after the
" covery of his ſickneſs, and there remain as aforeſaid."

Sect. 5. And it farther provided by the ſaid ſtatute, "
" if ſuch ſoldier or mariner repairing to his place of birth,
" cannot get work, he ſhall be ſet to work by two juſtic
" peace."

2 Inſt. 729.
4 Burn. 356.
4 Comm 165.

Sect. 6. And it is farther provided, " That if ſuch ſo
" or mariner reſort to ſome juſtice of the peace next adjoi
" to his place of landing, or to ſuch his direct way home,
" make known unto the ſaid juſtice his poverty; that the
" juſtice, upon perfect notice thereof had, may licenſe the
" ſoldier or mariner to paſs the next and direct way to the p
" where he is to repair, and to limit him ſo much time
" as ſhall be neceſſary for his travel thither; and that in
" caſe his licence being ſo made, and he purſuing the form
" ſuch his licence, ſhall and may, for his neceſſary relief
" travel, aſk and take the relief that any perſon ſhall will
" give him."

Vide 4 Burn, 755.

† It is alſo enacted by 17 Geo. 2. c. 5. with an exceptio
the proviſions of 39 Eliz. c. 17. " That all perſons wande
" abroad and begging, pretending to be ſoldiers, mariners,
" faringmen, ſhall be deemed rogues and vagabonds, and
" niſhable as the act directs, with whipping, impriſonment,

3 Inſt. 86.
6 Co. 27.
Co. Lit. 1.
Dalt. c. 107.
C. Car. 71.
Hutt. 134.

Sect. 7. The ſecond offence, of this kind, *viz.* That of
parting from the king's ſervice without licence, depends
ſeveral ſtatutes. For it was enacted by 18 Hen 6. c. 19. "
" ſoldiers retained in the manner preſcribed by that act,
" parting from their captains without licence, ſhall be guil
" felony;" but this ſtatute is now of little uſe, becauſe the
thod of retaining ſoldiers therein referred to, is diſuſed.

8. However by 7 Hen. 7. c. 1. and 3 Hen. 8. c. 5. force, "If any ſoldier being no captain, immediately re- l with the king, who ſhall be in wages and retained, or any preſt to ſerve the king upon the ſea, or upon the land nd the ſea, depart out of the king's ſervice, without li- e of his captain, he ſhall ſuffer as a felon, without the it of the clergy. And all juſtices of peace in every ſhire ngland, where any ſuch offenders be taken, have power quire of the ſaid offences, and the ſame to hear and rmine, as they may do of felony, treſpaſſes, and her offences expreſſed in the king's commiſſion to them e, as though the ſaid offences were done in the ſame ."

3 Inſt. 86. Dalt. c. 107. 2 And. 151. 3 Mod. 124. See alſo the other books above cited, and 1 Hale 672, to 680.

9. And by 2 Edw. 6. c. 2. "If any ſoldier ſerving king in his wars, in any his dominions, or on the ſeas, or nd the ſeas, or in Scotland, depart without licence of the enant, or admiral, or captain, &c. with booty, or rwiſe, being in the enemy's country or elſewhere in the 's ſervice, or out of any garriſon where he ſhall be ap- inted to ſerve, he ſhall be adjudged a felon, and exclud- rom his clergy; and the juſtices of every ſhire where offender ſhall be taken, may enquire of and determine offence, &c."

3 Inſt. 86. 6 Co. 67. Vide 27 Geo. 2. c. 9. 21 Geo. 3. c. 65. ſ. 32. reſpecting the puniſhment of ſoldiers in the ſervice of the Eaſt-India Company. And it is decided that a military *officer* in the

of the Eaſt India Company has not a right to reſign his commiſſion at all times, der any circumſtances whatſoever, whenever he pleaſes. 4 Burrow. 2421. By 29 . c. 17. ſubjects in the ſervice of the French king, as officers or ſoldiers, are guilty ny without clergy. Vide alſo the annual acts for the puniſhment of mutiny and on.

. 10. The third offence of this kind, *viz.* That of de- g a ſhip, depends upon 22 & 23 Car. 2 c. 11. and 1 Ann. . 9. by which it is enacted, "That if any captain, maſ- mariner or other officer belonging to any ſhip, ſhall wil- y caſt away, burn, or otherwiſe deſtroy the ſhip to which belongeth, or procure the ſame to be done, to the preju- e of the owner or owners thereof, or of any merchant or rchants that ſhall load goods thereon, he ſhall ſuffer as a n, without the benefit of clergy, and if the offence were mitted in the admiral's juriſdiction, ſhall be tried in the nner preſcribed by 28 Hen. 8. c. 15."

Sect. 11. Alſo it is further enacted by 4 Geo. c. 12. at if any owner of, or captain, maſter, mariner, or other cer belonging to any ſhip ſhall wilfully caſt away, burn, otherwiſe deſtroy the ſhip of which he is owner, or unto ich he belongeth, or in any manner of wiſe procure the ſame be done, to the *prejudice of any perſon that ſhall underwrite policy of inſurance thereon*, or of any merchant that ſhall d goods thereon, he ſhall ſuffer death."

Sect.

† *Sect.* 12. But by 11 Geo. 1. c. 29. ſ. 6. this cla
explained and the offenders are ouſted of clergy. And it i
ther enacted, "That if any of the ſaid offences be com
"within the body of a county, the ſame ſhall be tried i
"ſame manner as other felonies ſo committed. And if co
"ted upon the high ſeas, the ſame ſhall be tried, &c. ac
"ing to the directions of 28 Hen. 8. c. 15."

For the offences by maſters and mariners amounting to piracy, vide 11 and 12
3. c. 7. Ante ch. 37. For the puniſhment of ſoldiers and ſeamen convicted of p
curſing and ſwearing, vide 19 Geo. 2. c. 21. 23 Geo. 2. c. 33. Ante ch. 6. ſ. 4.
inferior offences reſpecting wages and deſertion, 2 Geo. 2. c. 36. 23 Geo. 2. c. 2
the regulation of ſeamens wages under certain penalties, 31 Geo. 2. c. 10. An
the inliſting of ſoldiers, &c. 4 Burn 212.

CHAPTER THE FORTY-NINTH.

OF OFFENCES BY HUNTERS.

3 Edw. 1. c. 20.
21 Edw. 1. c. 362.
3 Inſt. 76. 77.
Dalt. c. 29.
1 Hale 656 to 659.
2 Roll. 120, 133.
Co. Lit. 370.
2 Burn. 263.

IT is recited by 1 Hen. 7. c. 7. "That many great outr
murders, inſurrections and rebellions had often been
ſioned by perſons in great numbers with painted faces, v
and otherwiſe diſguiſed, and riotouſly, and in manner o
arrayed, hunting as well by night as by day;" and there
it is enacted, "That as often as information ſhall be m
"any ſuch unlawful huntings by night, or with painted f
"to any of the king's council, or to any juſtice of peace o
"county, of any perſon ſuſpected thereof, any of the ſame c
"cil, or juſtices, to whom ſuch information ſhall be m
"may make a warrant to arreſt ſuch perſon, and may
"examine him of the ſaid hunting, and of the ſaid doer
"that behalf; and if the ſame perſon wilfully conceal the
"huntings, or any perſon with him defective therein,
"then the ſame concealment be felony; and if he then
"feſs the truth, and all that he ſhall be examined of,
"knoweth in that behalf, that then the ſaid offences
"huntings be againſt the king but treſpaſs fineable by
"ſon of the ſame confeſſion, at the next general ſeſſions
"the peace to be holden in the ſame county, by the ki
"juſtices of the ſame ſeſſions, there to be ſeſſed. An
"reſcous or diſobedience be made to any perſon, having
"rity to do execution or juſtice by any ſuch warrant, by
"perſon, the which ſo ſhould be arreſted, ſo that the e
"cution of the ſame warrant thereby be not had, that t
"the ſame reſcous and diſobedience, be felony; and if
"perſon or perſons ſhall be convict of any ſuch huntings,
"painted faces, viſors, or otherwiſe diſguiſed, to the

ſhould not be known, or of unlawful hunting in time of
, that then the ſame perſon or perſons ſo convict, to have
punition, as he or they ſhould have, if he or they were
ict of felony."

Sect. 2. It is alſo further enacted by 9 Geo. 1. c. 22. perpetual by 31 Geo. 2. c. 22. "That if any perſon or ons been armed with ſwords, fire arms, or other offen- weapons, and having his or their faces blacked, or be- otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, k, paddock, or grounds incloſed with any wall, pale, or r fence, wherein any deer have been, or ſhall be uſually t;—or in any high road, open heath, common, or wn,—or ſhall unlawfully and wilfully hunt, wound, kill, troy, or ſteal any red or fallow deer—or unlawfully rob warren (a) or place where conies or hares are uſually t:—Or ſhall unlawfully ſteal or take away any fiſh out of pond or river.—Or if any perſon or perſons (*whether arm- and diſguiſed or not*) ſhall unlawfully and wilfully hunt, und, kill, deſtroy, or ſteal any red or fallow deer, fed or t in any places in any of the king's foreſts or chaſes, which or ſhall be incloſed with pales, rails, or other fences, or any park, paddock, or grounds incloſed, where any deer ve been or ſhall be uſually kept; (†) (1) (2) (3) (4));—or ſhall forcibly reſcue any perſon being lawfully in ſtody of any officer or other perſon for any the offences be- re mentioned;—or, if any perſon or perſons ſhall by gift promiſe of money, or other reward, procure any of his ajeſty's ſubjects to join him or them in any ſuch unlawful t; every perſon ſo offending, being thereof lawfully con- icted (in any county in England) ſhall ſuffer death without enefit of clergy—but not to work corruption of blood, nor orfeiture of land or goods."

N.B. The ſeveral facts mentioned in this act are not to be taken as being parts of the ſame offence; but are every of them ſeveral offences. Lord Hardwicke, B. R. H. 219.

(a) C. Eliz. 548. C. Jac. 195. 2 Bac. Ab. 614

(†) For offences relating to the deſtruction of fiſh, vide ch. 58, Appendix 3.

(1) For offences relating to cattle, vide ch. 46.

(2) For deſtroying of trees, vide ch. 58. app. 1.

(3) For offences

urners of houſes, &c. vide ch. 58, app. 4. (4) For ſhooting at another, vide ch. 58, 5. (5) For ſending threatning letters, vide ch. 58, app. 5.

Sect. 3. And, "For the more eaſy and ſpeedy bring- ng the offenders to juſtice," It is alſo enacted by the ſaid tatute, "That if any perſon or perſons ſhall be charged with being guilty of any of the offences aforeſaid, before ny two or more of his majeſty's juſtices of the peace of the county where the offence ſhall be committed, by infor- mation of one or more credible perſons, on oath by them o be ſubſcribed; the ſaid juſtices ſhall forthwith certify un- der their hands and ſeals, and return ſuch information to one of the principal ſecretaries of ſtate; who ſhall lay the ſame, as ſoon as conveniently may be, before the king in his privy council; whereupon it ſhall and may be lawful

The ſurrender clauſe. For conſtructions upon a ſimilar clauſe in the Smuggling act, vide the caſe of John Harvey Foſter 51. And poſt. ch. 58. Appendix 7. ſect. 2.

" for

" for his majeſty, his heirs or ſucceſſors, to make his ord
" ſaid privy council, thereby requiring and commanding
" offender to ſurrender himſelf within the ſpace of forty
" to any of the juſtices of the King's Bench, or to any one
" tice of the peace, to the end that he may be forthcomi
" anſwer the offence wherewith he ſhall ſo ſtand charged,
" cording to the due courſe of law; which order ſhall be pri
" and publiſhed in the next London gazette, and ſhall be ſe
" with tranſmitted to the ſheriff of the county where the of
" ſhall be committed, and ſhall within ſix days after the re
" thereof, be proclaimed by him or his officers, between the h
" of ten in the morning and two in the afternoon, in the m
" places, upon the reſpective market days, of two market t
" in the ſame county, *near* the place where ſuch offence
" have been committed; and a true copy of ſuch order
" be affixed upon ſome public market place in ſuch m
" towns; and in caſe ſuch offender ſhall not ſurrender hi
" purſuant to ſuch order of his majeſty, his heirs or ſucce
" to be made in council as aforeſaid, he ſhall, from the
" appointed for his ſurrender as aforeſaid, be adjudged, de
" and taken to be convicted and attainted of felony, and
" ſuffer pains of death, as in caſe of a perſon convicted
" attainted by verdict and judgment of felony, without be
" of clergy; and the court of King's Bench, or judges of
" and terminer, *&c.* for the county where the offence is ſu
" inſuch an information to have been committed, upon proc
" ing to them ſuch order in council under the ſeal of the
" council, to award execution againſt ſuch offender in
" manner as if he had been convicted and attainted in the
" court of King's Bench, or before ſuch juſtices of oyer
" terminer, or general goal delivery reſpectively."

† *Sect.* 4. And it is further enacted, par. 5. " That w
" ever ſhall, after the time appointed, as aforeſaid, for
" ſurrender of any perſon ſo charged upon oath, with any
" offences aforeſaid, be expired, conceal, abet, or ſucc
" ſuch perſon, knowing him to have been ſo charged, as af
" ſaid, and to have been required to ſurrrender himſelf by
" order, being lawfully convicted thereof, ſhall ſuffer de
" without benefit of clergy."

For the inſtances in which the hundred ſhall be liable to the amount of 200 l. and for the previous proceedings which are neceſſary to intitle the party to recover, vide 7, 8, 9, and 10 ſections the act, and Douglas 704. For the rewards for apprehending an offender, vide Bk. 13. ſ. 28.

† *Sect.* 5. But this ſhall not hinder any judge, juſtice of peace, magiſtrate, officer, or miniſter of juſtice, from apprehending or ſecuring ſuch offender, by the ordinary courſe of law, and if he be taken and ſecured before the time of ſurrender, ſhall have his trial by due courſe of law.

Sect. 6. It is enacted by 5 Geo. 1. c. 28. "That whoever ll enter into any park, paddock, or other incloſed ground ere deer are uſually kept, and wilfully wound or kill any or fallow deer therein, without licence from the owner or per, or ſhall aid or aſſiſt in the committing of any ſuch of-e, ſhall be tranſported for ſeven years.

Sect. 7. But by 16 Geo. 3. c. 30. (which repeals, by name, rmer ſtatutes, except the ſtatute above mentioned, as far as elate to deer) it is further enacted, "That whoever ſhall rſe or hunt, or ſhall take in any ſlip, nooſe, toil, or ſnare, or ll kill wound or deſtoy, or ſhall ſhoot at, or otherwiſe mpt to kill, wound, or deſtroy,—or ſhall carry away any or fallow deer, in any foreſt, chaſe, purlieu, or ancient lk, whether incloſed or not, or in any incloſed park, pad-k, wood, or other incloſed ground where deer are, have n or ſhall be uſually kept, without the conſent of the owner, without being otherwiſe duly authoriſed; or ſhall be ing, abetting, or aſſiſting therein or thereunto; every per-n ſo offending, by courſing, hunting, ſhooting at, or other-ſe attempting to kill, wound, or deſtroy; or by aiding rein or thereunto, ſhall forfeit for every ſuch offence twenty unds.—And every perſon ſo offending by killing, wound-g, or deſtroying, or by taking in any ſlip, nooſe, toil, or are, or by carrying away, or by aiding therein reſpectively, all for every deer ſo wounded, killed, deſtroyed, taken, or rried away forfeit thiry pounds.—And if the offender in any the caſes aforeſaid, ſhall be a keeper of, or perſon in any anner intruſted with the cuſtody or care of deer in the foreſt, haſe, purlieu, ancient walk, or incloſed park, paddock, or ood, or other incloſed place where the offence ſhall be mmitted, every ſuch offender ſhall forfeit double the penalty rein inflicted on other offenders.—And whoever after having en convicted of any of the aforeſaid offences, ſhall offend a cond time, ſuch ſecond offence, whether it be the ſame as e firſt offence, or be any other of the aforeſaid offences, ſhall e deemed felony, and the perſon guilty thereof, on conviction y indictment, ſhall be tranſported for ſeven years.—And if y offender who hath been convicted under any former ſtatute ow in force for hunting and killing deer, &c. ſhall again com-it any of the offences abovementioned, he ſhall be adjudged have committed a ſecond offence, under the proviſions and enalties of this act."—And, "For the more eaſy bringing ſuch ffenders to puniſhment, the juſtice before whom any perſon hall be convicted for the firſt time, ſhall tranſmit ſuch convic-ion under his hand and ſeal to the next quarter ſeſſions, to be "filed

Holt 214, 215. Carth. 508, 509. Strange 44, 263, 316 10 Mod. 248, 341, 378. Farres. 129, 134. Salk. 542. C. Car. 340. Seſſ. Caſ. 346. Gilb. Caſ. 282.

The milder puniſhment inflicted by this act has been thought a virtual repeal of the puniſhment inflicted by the black act above recited. O. B. 1784, 1071.

" filed among the records, by the clerk of the peace, wh
" a true copy thereof, certified and subscribed by the said
" shall be sufficient evidence of the conviction for the
" fence."

† *Sect.* 8. It is also enacted, par. 4. " That any
" tice, on complaint of suspicion, on oath, shall, by w
" cause the house of the person suspected to be searched,
" any red or fallow deer, which shall have been unlawfull
" ed, or the head, skin, or other part thereof, or an
" noose, toil, snare, or other engine for the unlawful ta
" deer, shall be found, to cause the same and such per
" having possession; or in whose dwelling-house, out-house
" den, or other place the same shall be found, to be brough
" fore any justice having jurisdiction, and if such person
" not produce before such justice the party of whom he rec
" the same, or satisfy such justice that he came lawfully by
" deer, or the head, skin, or other part thereof, or had a
" ful occasion for such noose, slip, toil, snare or other e
" and did not keep the same for any unlawful purpose, he
" forfeit not exceeding 30*l.* nor less than 10*l.* at the discre
" such justice."

And by par. 5. " If the person in whose possession the
" shall be found shall not under the provisions aforesaid,
" liable to conviction, any justice having jurisdiction may
" mon before him every person through whose hand such
" &c. &c. shall appear, upon the evidence given to have p
" and if the person from whom such deer, &c. &c. shall ap
" to have been first received, or who having had possession the
" shall not give proof to the satisfaction of such justice tha
" came lawfully by the same, such person shall, on every
" viction, forfeit not exceeding 30*l.* nor less than 10*l.*" A
by par. 6. " If on the search, by warrant, no deer, &c.
" be found, and it shall appear on the oath of one witness
" any person hath, or hath had any such deer, &c. &c. in
" possession, and shall be reasonably suspected to have
" dishonestly or unlawfully thereby, every such person,
" all others through whose hands the same shall appear to
" passed under the like suspicion, may be proceeded against
" if such deer. &c. &c. had been found in the possession, ho
" out-house, garden, or place of such person, on search by w
" rant as aforesaid."

Sect. 9. And it is further enacted, par. 7. " That w
" ever shall lay snares or other engines for the purpose of ta
" or killing deer, within or upon any forest, &c. or in
" ring, or outer-fence, or bank, dividing the same from
" adjoining lands;—or in any inclosed park, &c. shall,
" the first offence, forfeit not exceeding 10*l.* nor less th

By the grant of a forest, the game of a forest doth pass. Dyer 169.

l. and for every other offence not exceeding 20l. nor less han 10l."

Sect. 10. And it is further enacted by par. 9. "That if any Transportation. erſon carrying any gun or other fire-arms, or any ſword, ſtaff, r other offenſive weapon, ſhall come into any foreſt, chaſe, urlieu, or ancient walk, or into any incloſed park, pad- ock, wood, or into any other ground where deer are uſually ept, be the ſame incloſed or not incloſed, with an intent un- wfully to ſhoot at, courſe, or hunt, or to take in any ſlip, ooſe, toil, ſnare, or other engine, or to kill, wound, deſtroy r take away, any red or fallow deer, it ſhall be lawful for very ranger or keeper, or perſon intruſted with the care of uch deer, to ſeize and take from ſuch perſon, in and upon uch foreſt, chaſe, purlieu, ancient walk, park, paddock, ood, or other ground, to and for the uſe of the owners there- f, reſpectively, all ſuch guns, fire-arms, ſlips, nooſes, toils, nares, or other engines; and all dogs there brought for courſ- ng deer, in the ſame and like manner as game-keepers of anors are empowered by law within their reſpective manors, o ſeize and take dogs, nets, or other engines in the cuſtody of erſons not qualified by the laws to keep the ſame. And if any uch perſon ſhall there unlawfully beat, or wound any ranger r keeper, or his or their ſervants, or aſſiſtants, in the execu- ion of his or their offices, or ſhall attempt to reſcue any per- ſon in the lawful cuſtody of any ſuch ranger, keeper, ſervant, r aſſiſtant, every perſon ſo offending on conviction by indict- ment, ſhall be tranſported for ſeven years."

Dogs and engines may be ſeized.

CHAPTER THE FIFTIETH.

OFFENCES BY DESTROYING FENCES, TURNPIKE-GATES, AND BRIDGES.

(FENCES.)

IT is enacted by 13 Edw. 1. ſt. 1. c. 46. "That where "ſometimes it chanceth that one having right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by ver- dict of the aſſize or jury who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact, the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages."— And by 3 & 4 Edw. 6. c. 6. ſuch perſon as ſhall bring an aſſize

Vide a critical commentary upon this act, 2 Inſt. 473. See alſo caſes upon it, Skinner 93. C. Car. 281. 440, 580. Dyer 47, 316, 339. 4 Co. 38. 11 Co. 74. 1 Roll. 365.

" assize thereupon, and have judgment to recover, shall have
" damages trebled, by the judgment of the court."

† *Sect.* 2. And it is farther enacted by 6 Geo. 1. c.
" That whoever shall break down, throw down, level, or
" stroy any hedges, gates, posts, stiles, railing, walls, fen
" dykes, ditches, banks, or other inclosures of such wo
" wood-grounds, parks, chases, or coppices, plantations, tim
" trees, fruit or other trees, thorns or quicksets, shall by 6 G
" 1. s. 2. c. 48. be committed to the house of correction for th
" months, and where there are no houses of correction, to
" other prison of the county or place for four months, and wh
" ed, and on conviction, by two justices in open sessions;
" such lords of manors, owners and proprietors of the fe
" that is, are, or shall be damaged thereby, shall have
" remedy and satisfaction from the adjoining parishes and p
" as is given by the above recited act of 13 Edw. the First."

For the mode in which the justices are directed to proceed, vide the act, and ante ch. 49.

† *Sect.* 3. And it is further enacted by 16 Geo. 3. c. 30. s.
" Whoever shall wilfully pull down or destroy, or cause to be w
" fully pulled down or destroyed, the pale or pales, or any par
" the walls of any forest, chace, purlieu, ancient walk, park, p
" dock, wood, or other ground where any red or fallow deer
" be then kept, without the consent of the owner, or per
" chiefly intrusted with the custody thereof, or being otherw
" duly authorised, shall forfeit and pay the sum of thirty pou
" on information upon oath before one justice, by one witn
" &c. and whoever having been convicted shall offend a sec
" time, shall on conviction by indictment, be transported
" seven years, provided the prosecutions be within six month

† *Sect.* 4. By 9 Geo. 3. c. 29. s. 3. " Whoever shall w
" fully or maliciously demolish, pull down or otherwise dest
" or damage any fence made for dividing or inclosing any co
" mon, waste, or other lands or grounds in pursuance of any
" of parliament, or shall cause or procure the same to be do
" he shall be guilty of felony, and transported for seven ye
" Prosecution to be commenced in 18 months after the offe
" committed,"

(TURNPIKE-GATES.)

Vide 13 Edw. 1. s. 1. c. 40.
1 Geo. 1. s. 2. c. 48.
6 Geo. 1. c. 16.
4 Comm. 144.

† *Sect.* 5. It is enacted by 1 Geo. 2. s. 2. c. 19. " That
" any person or persons shall, either by day or night, wilfu
" and maliciously break down, cut down, pluck up, throw dow
" level or otherwise destroy any turnpike-gate, any posts, rai
" wall, or other fence, belonging to any such turnpike-g
" erected to prevent passengers from passing by without pay
" the toll directed to be paid by any act of parliament, s
" offend

ender, on the oath of one witneſs, before two juſtices, or ſeſſions, ſhall be ſent to the common gaol or houſe of correction, to hard labour, for three months, and be once publickly whipped."

And it is farther enacted by the ſaid ſtatute, 1 Geo. 1. c. and by 5 Geo. 2. c. 33. "That on conviction of the ſaid offence, by indictment before juſtices of aſſize, oyer and terminer, or gaol delivery for the county, &c. the offender ſhall be tranſported for ſeven years; and that if ſuch offender ſo convicted, commit any of the offences aforeſaid a ſecond time, if any perſon or perſons ſhall either by day or night, wilfully and maliciouſly pull down or demoliſh any houſe or houſes, erected for the uſe of any turn-pike-gates, ſuch offender, on conviction by indictment, before juſtices of aſſize, gaol delivery, ſhall be guilty of felony, and tranſported ſeven years. Provided, in both caſes, the proſecution be within ſix months."

Sect. 6. It is alſo enacted by 5 Geo. 2. c. 33. "That if ſuch offender ſhall return from tranſportation, as aforeſaid, he ſhall ſuffer death without clergy. Vide B. 2. c. 33. tit. tranſportation.

Sect. 7. And it is alſo enacted by 8 Geo. 2. c 20. "That whoever ſhall be guilty of the offences abovementioned, or if any perſon or perſons ſhall deſtroy, &c. any chain, bar, or other fence or fences belonging to any ſuch turnpike-gate or gates as aforeſaid, or any other chain, bar, or fence of any kind whatſoever, ſet up or erected to prevent paſſengers from paſſing without paying toll by act of parliament, or ſhall forcibly reſcue any perſon or perſons, being lawfully in cuſtody of any officer or other perſon for any of the offences before mentioned, ſuch offender ſhall ſuffer death without clergy—Vide further proviſions by this act." N. B. The 27 Geo. 2. c. 16. makes 5 Geo. 2. c. 33. 8 Geo. 2. c. 20. perpetual.

Sect. 8. By 13 Geo. 3. c. 84 ſ. 42. "If any perſon or perſons ſhall commit any of the offences aforeſaid, or deſtroy any crane, machine or engine made or erected on any turnpike road, by authority of parliament, for weighing waggons, carts, or carriages, or ſhall forcibly reſcue, &c. ſuch offender ſhall be tranſported for ſeven years, or committed to priſon, not exceeding three years, at the diſcretion of the court; and unleſs the offender be convicted within twelve months, the hundred ſhall make ſatisfaction for the damages done." 7 Geo. 3. c. 40.

(BRIDGES.)

Sect. 9. It is enacted by 9 Geo. 1. c. 29. ſ. 6. for preventing the wilful and malicious damaging or deſtroying Weſtminſter-bridge, or any part thereof, "That if any perſon or And the ſame is enacted by 31 Geo. 2. c. 10. ſ. 6. reſpecting

London bridge, and by 12 Geo. 1. c. 36. ſ. 3. reſpecting Fulham Bridge.—But by 20 Geo. 2. c. 22. he diſtinction of Walton bridge. By 23 Geo. 2. c. 37. of Hampton-court bridge.

" perſons ſhall wilfully and maliciouſly blow up, pull down,
" deſtroy the ſaid bridge, or any part thereof, or attempt
" to do, or unlawfully and without authority remove or
" away any works thereto belonging, or in any wiſe direct
" procure the ſame to be done, whereby the ſaid bridge,
" the works thereof may be damaged, or the lives of
" paſſengers endangered, ſuch offender or offenders ſhall
" adjudged guilty of felony, and ſuffer death *without* be
" of clergy."

By 24 Geo. 2. c. 36. of Ribble bridge. By 28 Geo. 2. c. 45. of Sandwich bridge. 29 Geo. 2. c. 86. of Blackfryars bridge. By 29 Geo. 2. c. 73. of Urſe bridge. By Geo. 2. c. 59, of Jeremiah's Ferry. By 30 Geo. 2. c. 63, and 31 Geo. 2. c. 48. of Brentford bridge, and by 31 Geo. 2. c. 59, of Trent bridge, is made ſingle felony, *within* the benefit of clergy.

CHAPTER THE FIFTY-FIRST.

OF OFFENCES BY GAOLERS.

1 Hale 640, 641, 601.
S. P. C. 36. C.
3 Inſt. 91.
2 Inſt. 589, 381.

BY 14 Edw. 3. c. 10. "If any keeper of a priſon, or
" der-keeper, by too great dureſs of impriſonment, and
" pain, make any priſoner that he hath in his ward, to be
" an appellor againſt his will, he is guilty of felony." And
ſaid to be no way material, whether the approvement be tru
falſe, or whether the appellee be acquitted or condemned,
at law this offence was eſteemed a miſpriſion only, unleſs the
" pellee were hanged by reaſon of the appeal.

GAOLERS, as well *de facto* as *de jure*, are liable to attachment for contempt of
and to fine, impriſonment, and forfeiture of office for groſs and palpable abuſes; a
treating criminals with barbarity, extorting money, not making lawful deliverance
ſuffering them to eſcape. 4 Ed. 3. c. 10. 2 Inſt. 43, 53, 381. Co. Lit. 233. 4 Co.
9 Co. 50. Ray. 216. Lev. 71. 2 Hawk. 151. 3 Mod. 143. And if death be
conſequence of their harſh treatment, it is felonious homicide. 3 Inſt. 91. Foſt.
By the 3 Hen. 7. they muſt certify the names of their priſoners at every gaol delivery
order to be calendered. By 19 Hen. 7. c, 10. they are liable to heavy fines for ſuffe
the eſcape of priſoners committed for ſuſpicion of high or petit treaſon. 12 Mod.
By 22 and 23 Car. 2. c. 13. debtors and felons are to be ſeparately lodged on forfei
of office and treble damages. By 8 and 9 Will. 3. c. 27. to ſuffer an eſcape by bri
5ool. loſs of office, and diſability, &c. vide poſt. 119. 3 Lev. 288. Ray. 216. By
1. c. 15. they are reſtrained from purchaſing the office, penalty 5ool. &c. By 9 Ge
c. 22. 11 Geo. 1. c. 22. to neglect or refuſe to execute proceſs in the manner dir
by the act, 2ool. &c. By 5 Geo. 2. c. 30. to ſuffer a bankrupt to eſcape 5ool. By
2. c. 22. and 21 Geo. 2. c. 33. to carry a priſoner for debt to gaol againſt his will
24 hours after he is taken, to exact any gratuity from, or to force any expence upon
to purloin his bedding, apparel, &c. or to refuſe him or his friends a copy of the
of this act to read, &c. incurs an additional penalty of 5ol. and the offender may
dicted for the miſdemeanour. By 24 Geo. 2. c. 40, to permit ſpirituous liquors
ſold in the goal 100l. By 27 Geo. 2. c. 17. the king's bench is veſted in the crown,
the marſhal made liable, &c. By 32 Geo. 2. gaolers guilty of extortion may be puniſh
a ſummary way, and for diſobeying the injunctions of the act forfeit 20l. and treble
By 14 Geo. 3. c. 59. to diſobey an order of juſtices made purſuant to the act is lia
fine at the diſcretion of the judges of aſſize, or the juſtices in ſeſſions. See alſo
12 Will. 3. c. 19. 24 Geo. 3. c. 54, and 47. and 3 Mod. 143, 11 Mod 51, 79, &c.
Mod. 227. 2 Rol. Ab. 76. Jenk. 23. For the fees of gaolers vide 2 Geo. 2. c. 22.
Geo. 2. c. 27. 8 Geo. 2. c. 24. 21 Geo. 2. c. 33. 32 Geo. 2. c. 28.

CHA

CHAPTER THE FIFTY-SECOND.

OFFENCES BY TRANSPORTERS OF SHEEP OR WOOL.

BY ſome old ſtatutes, and 13 & 14 Car. 2. c. 18. the exportation of wool was made felony; but by 7 & 8 Will. 3. c. it is reduced to a miſdemeanor only, and it is ſubjected to ere penalties by many late ſtatutes. 3 Inſt. 95, 96. 4 Comm. 154.

Sect. 2. It is enacted by 8 Eliz. c. 3. "That no perſon or perſons ſhall bring, deliver, ſend, receive, or take, or procure to be brought, delivered, ſent, or received into any ſhip or bottom, any rams, ſheep or lambs, or any manner of other kind of ſheep, being alive, to be carried and conveyed out of this realm of England, Wales, or Ireland, or out of any of the king's dominions, on pain that every ſuch perſon or perſons, their aiders, abettors, procurers and comforters, ſhall for the firſt offence forfeit all his goods for ever, whereof the one moiety ſhall be to the king, the other moiety to him that will ſue for the ſame." And further, "That every ſuch offender ſhall ſuffer impriſonment by the ſpace of one whole year, without bail or mainprize, and at the year's end, ſhall in ſome open market-town, in the fulneſs of the market, on the market-day, have his left hand cut off, and that to be nailed up, in the openeſt place of ſuch market; and that every perſon or perſons oftſoons offending againſt this ſtatute, ſhall be adjudged a felon, &c."

† *Sect.* 3. It is enacted by 12 Car. 2. 32. "That whoever ſhall export, or cauſe to be exported any ſheep or wool whatſoever; or pack or load, or cauſe to be packed or loaded upon any horſe, cart or other carriage; or load on board, or cauſe to be loaded on board any ſhip or other veſſel, any ſheep or wool, whatſoever, to the intent and purpoſe to export, or cauſe the ſame to be exported, ſhall forfeit the ſame, and twenty ſhillings for every ſheep, and three ſhillings for every pound of wool. And the owners of the ſhip knowing ſuch offence, ſhall forfeit all their intereſt therein, with the apparel and furniture thereto belonging. And the maſter and mariners knowing thereof, and willingly aiding in ſuch offence, ſhall forfeit all their goods ond chattels, and have impriſonment for three months. And if any merchant or other perſon who ſhall be guilty, ſhall be diſabled to ſue in law. And by 9 & 10 Will. 3. c. 40 ſ. 9. proſecutions may be commenced

Vide 6 Geo. 1. c. 21. 11 Geo. 2. c. 21 whereby diſcoverers are indemnified.

Vide 13 and 14 Car. 2. c. 18. 7, for the penalty of preſſing wool into packages, and laying it in places convenient for exportation.

" menced by the informer within one year, and by the c
" within three years after the offence committed."

† *Sect.* 4. Alſo, by 7 & 8 Will. 3. c. 28. ſ. 10. " Who
" ſhall be aiding in exporting any wool out of this realm
" ſuffer three years impriſonment, and the owner and aider
" pay treble the value of what the inhabitants ſhall be liable
" (vide ſ. 9.) as alſo treble coſts of ſuit."

† *Sect.* 5. And it is alſo enacted by 4 Geo. 1. c. 11. "
" whoever ſhall be in priſon for want of ſufficient bail for
" unlawful exportation of wool, or by 12 Geo. 2. c. 21. ſ.
" for aiding or abetting therein, and ſhall refuſe to appear
" plead to a declaration or information to be delivered to
" perſon or perſons, or to the gaoler, keeper, or turnkey of
" priſon at the priſon for the ſaid offence, by the ſpace of
" term, judgment ſhall be entered againſt him by default,
" in caſe judgment ſhall be ſo obtained, or by verdict or o
" wiſe, and the defendant ſhall not pay the ſum recovered
" the ſaid offence within three months after entering up of
" judgment, the court before whom ſuch judgment ſhall be
" tained, ſhall by order of court, cauſe ſuch offender
" tranſported for ſeven years, and if he return before the ex
" tion thereof, he ſhall ſuffer death without clergy.

† *Sect.* 6. And it is further enacted by 12 Geo 2. c. 21. ſ.
26. " that whoever ſhall offer or promiſe to give any bribe
" officer of the cuſtoms, exciſe or ſalt, to connive or per
" the tranſportation or the concealment of any wool, or the
" moving thereof contrary to this act, or any other made ag
" the tranſportation thereof; or to do, conceal, or connive
" any other act whereby any of the proviſions made by this
" any other law, as aforeſaid, may be evaded or broken,
" forfeit, whether the offer or promiſe were accepted or not,
" ſum of three hundred pounds to the informer.—And it is
" ther enacted, par. 26. that if any officer of the cuſtoms, ex
" or ſalt, or any other perſon who ſhall act in their aid or a
" ance, in putting this act in execution, ſhall be hindred,
" poſed, obſtructed, moleſted, wounded or beaten, in ſe
" any wool, the offenders, their aiders and abettors, or any
" perſon or perſons whatſoever being armed with offenſive arm
" weapons, or wearing any vizard, maſk, or other diſguiſe,
" ſhall reſcue or attempt to reſcue any wool which ſhall
" ſeized by any officers as aforeſaid, ſhall be tranſported for
" term not exceeding ſeven years, as the court ſhall think fit.

† *Sect.* 7. Alſo it is further enacted by 19 Geo. 2. c.
ſ. 6. " That if any perſons armed, to the number of three
"

Continued by 11 Geo. 3. c. 51.

ore ſhall be aſſembled to aſſiſt in the illegal exportation wool prohibited to be exported, or in carrying of wool order to exportation, or in reſcuing the ſame after ſeiz- e; or in reſcuing an offender herein, or preventing his ing apprehended; or ſhall be aiding in any of the pre- ſes; or if any perſon ſhall have his face diſguiſed when ſſing with ſuch goods, or ſhall forcibly hinder or aſſault any ficer in ſeizing the ſame, or dangerouſly wound any ſuch attempting to go on board any veſſel, or ſhoot at or wound m when on board in the execution of his office; ſhall be ilty of felony without benefit of clergy."

N. B. There are ſeveral other felonies in this act againſt ſmugglers, for which vide appendix the ſixth.

4 Burn. 418, for a full account of this title.

CHAPTER THE FIFTY-THIRD.

OFFENCES by SERVANTS.

T is recited by 33 Hen. 6. c. 1. "That divers houſhold- ervants, as well of lords, as of other perſons of good de- , had then of late, ſhortly after the death of their ſaid s and maſters, violently and riotouſly taken and ſpoiled the ds which were of their ſaid lords and maſters at the time of r death, and the ſame diſtributed among themſelves;" and eupon it is enacted, "That after information made to the hancellor by the executors of any ſuch perſon, or two of em, of ſuch riot, taking, and ſpoil; the chancellor, by e advice of the two chief juſtices, and chief baron, or two f them, may make out writs to ſuch ſheriffs as ſhall be ought neceſſary, commanding them to make ſuch proclama- on, as by the ſaid ſtatute is directed, for the offenders to ap- ear in the King's Bench at ſuch a day, whereupon, if they ake default, they ſhall be attainted of felony; but if they ppear, they ſhall be committed or bailed, till they have an- wered the ſaid executors in ſuch actions, which the ſaid exe- utors will declare againſt them, or any of them, for the riot, aking, and ſpoiling aforeſaid."

Ante 91.
1 Hale 667.
4 Burn 118.
This was a proceſs much in uſe in caſe of great offences, eſpecially about this king's reign, to convict men ſometimes in civil offences, ſometimes in caſes criminal upon default of appearance, at the return of the proclamation.
1 Hale 654.
3 Inſt. 104.

By 6 Ann. c. 31. "If any menial or other ſervant, hrough negligence or careleſſneſs ſhall fire, or cauſe to be red any dwelling houſe or out-houſe, they ſhall forfeit 100l. n conviction by one witneſs, before one juſtice, or ſuffer ighteen months impriſonment, &c."

Ld. Ray. 99.

ee alſo 12 Geo. 3. c. 73. ſ. 35. 14 Geo. 3. c. 78. ſ. 84. And for offences by ſer- ts in particular branches of trade, vide 4 Burn 118.

CHAP-

CHAPTER THE FIFTY-FOURTH.

Of OFFENCES by EGYPTIANS.

3 Inſt. 102. Vide 22 Hen. 8, c. 10. The 5 Eliz. c. 20, recited in the former edition, is repealed by 23 Geo. 3 c. 51, as a law of exceſſive ſeverity, vide 4 Comm. 4, and for the hiſtory of this extraordinary claſs of people, 4 Comm. 165.

BY 1 & 2 Ph. & Mar. c. 4. "All outlandiſh perſo "called Egyptians, being of the age of thirteen ye "who ſhall be tranſported into this realm of England or Wa "and continue within the ſame by the ſpace of one mo "ſhall forfeit forty pounds, &c.—" And by 17 Geo. 2, c. "All perſons pretending to be gypſies, or wandering in "habit or form of Egyptians ſhall be deemed rogues and "gabonds, and ſuffer corporal puniſhment and impriſonme "in the manner the act directs."

CHAPTER THE FIFTY-FIFTH.

Of OFFENCES by CUTTERS of POW-DIK AND DESTROYERS of SLUICES, &c. NAVIGABLE RIVERS.

4 Comm. 243.

IT is recited by 22 Hen. 8. c. 11. which was repeal by 1 Edw. 6. and revived by 2 & 3 Ph. & Mar. c. "That divers perſons had maliciouſly at ſundry times cut dow and broken up, divers parts of the dike, called the new P dike, in Marſhland, in the county of Norfolk, and the B ken-dike, otherwiſe called Oldfelde-dike, by Marſhland, the Iſle of Ely, in the county of Cambridge: By reaſon whe of the ground within the country of Marſhland in the coun aforeſaid, had been many times drowned; and the inhabita had not only been put to great charges and expences, but t had loſt much cattle, and alſo many people had been drow in their beds." And thereupon it is enacted, "That eve "ſuch perverſe and malicious cutting down, and breaking "of, any part or parts of the ſaid dikes, or of any other ba "being parcel of the rind and uttermoſt part of the ſaid co "try of Marſhland, by any perſon or perſons, otherwiſe th "in working upon the ſaid bank or dikes, for the repair "fortifying, and amending of the ſame, ſhall be adjudged "lony, and that the juſtices of peace of the ſaid counties "Norfolk and Cambridge, within the ſaid iſle, ſhall have

"pow

ver at their ſeſſions to cauſe enquiry to be made of every h offence, to award like proceſs, judgment, and executi- as they have uſed to do upon other felonies, being felony common law."

Sect. 2. It is enacted by 1 Geo. 2. ſt. 2. c. 19. ſ. 2. perpetual by 27 Geo. 2. c. 16. "That whoever ſhall, ner by day or night, wilfully and maliciouſly break down demoliſh any lock, ſluice, or floodgate erected by act of liament upon any navigable river, for preſerving or ſecu- the navigation thereof, on conviction, by indictment hin ſix months at the aſſizes, may be tranſported for ſeven ars."

Sect. 3. By 8 Geo. 2. c. 20. made perpetual by 27 Geo. 16. "Whoever ſhall wilfully or maliciouſly pull down, ck up, throw down, level, or otherwiſe deſtroy any lock, ice, floodgate or other works, on any navigable river, ected by authority of parliament; or forcibly reſcue any ſon or perſons in lawful cuſtody for the ſame, ſhall fer death without benefit of clergy." The offence may ied in any adjacent county, but without corruption of d, &c.

Sect. 4. It is alſo enacted by the ſaid ſtatute, par. 2. hat whoever ſhall wilfully and maliciouſly draw or pluck any flood-gate, fixed or made in any wear or lock, erect- by authority of parliament, in or upon any navigable ri- r, for preſerving the navigation thereof, on conviction by witneſs, before two juſtices of that or of the adjacent coun- , ſhall be ſent to hard labour for one month in the houſe correction;—and the hundred made liable to the amount twenty pounds, &c."

Sect. 5. And it is further enacted by 10 Geo. 2. c. 32. hat whoever ſhall unlawfully cut off, draw up, or remove d carry away, any piles, chalk, or other materials which all be driven into the ground and uſed for the ſecuring y marſh, or ſea-walls or banks, in order to prevent the nds lying within the ſame, from being overflowed and maged, ſhall forfeit twenty pounds; one moiety to the former, the other to the poor; and in default, by diſ- reſs, ſhall be kept at hard labour for ſix months." Any one ce of the place, on information upon oath, may ſummon the nder to appear, or iſſue his warrant to apprehend him, upon appearance, or non-appearance, may convict, on con- on, or the oath of one witneſs.

Sect. 6. And it is further enacted by the above ſtatute, hat all the proviſions of the Black Act of 9 Geo. 1. c. 2. for the bringing offenders, their aiders and abettors o juſtice; for making compenſation to the party injured; or the reward for apprehending offenders, &c. and for he more impartial puniſhment of the offences therein

"men-

" mentioned; together with all reſtrictions, limitations, &
" mitigations of the ſaid act, ſhall extend to all caſes of
" ces by breaking down, or cutting down any bank or
" of any river, or any ſea-bank, whereby any lands ſhall
" overflowed or damaged."

† *Sect.* 7. And by 6 Geo. 2. c. 37. made perpetual by
Geo. 2. c. 42. " Whoever ſhall unlawfully and malicio
" break down, or cut down the bank or banks of any
" or any ſea bank, whereby any lands ſhall be overflo
" or damaged, ſhall ſuffer death without clergy."

Vide 23 Geo. 3. c. 25.

† *Sect.* 8. By 27 Geo. 2. c. 19. " Whoever ſhall
" ciouſly cut, break down, burn, demoliſh, or deſtroy
" bank, mill, engine, floodgate or ſluice, erected
" ſupported or maintained for the purpoſe of benefiting
" Bedford level, ſhall ſuffer death without clergy." And fur
" Whoever ſhall maliciouſly ſtop, dam up, demoliſh, da
" or deſtroy any river, drain, water-courſe, door, dam, bri
" or other works erected for the purpoſes aforeſaid, o
" viction before two juſtices for the counties and iſle
" either of them, ſhall forfeit one hundred pounds."

† *Sect.* 9. By 4 Geo. 3. c. 12. ſ. 5. which recites
the laws in being were not ſufficient for the preſer
of banks, floodgates, ſluices, and other works belonging
navigable rivers, and thereupon it is enacted " That w
" ever ſhall wilfully or maliciouſly break, throw down,
" mage or deſtroy any banks, floodgates, ſluices, or
" works, or open or draw up any floodgate, or do any
" wilful hurt or miſchief to any navigation erected by aut
" ty of parliament, ſo as to obſtruct, hinder, or prevent
" carying on, compleating, ſupporting, or maintaining
" navigation, may be tranſported for ſeven years."

For the penalty of breaking the dams of private fiſheries, vide 37 Hen. 8. c. 6. a
Eliz. c. 21. For obſtructing and filling up any haven, road, channel, or navigable r
vide 19 Geo. 2. c. 22. Burr. 656. For offences by bum boats on the river Thame
Geo. 3, c. 28. And for the prevention of theſts on navigable rivers, vide 24 Geo. 2. c.

CHAPTER THE FIFTY-SIXTH.

OF OFFENCES BY TRESPASSERS ON T BORDERS; AND RIOTERS.

4 Jac. 1. c. 1.
7 Jac. 1. c. 1.
3 Inſt. 66, 67.
3 Burn. 231, 232.
4 Comm. 243.

IT is recited by 43 Eliz. c. 13. " That then of late y
many of the queen's ſubjects dwelling in the cou
of Cumberland, Weſtmorland, and the biſhoprick of D
ham, had been taken, ſome from their own houſes, and o
in travelling on the highway, or otherwiſe, and been carr
away as priſoners, and kept barbarouſly, and cruelly,

had been redeemed by great ranſoms; and alſo, that of late time there had been many incurſions, robberies urning and ſpoiling of towns, villages, and houſes, within id counties, ſo that divers of the queen's ſubjects, in the ounties, had been enforced to pay a certain rate of money, cattle, or other conſideration, commonly called black- to divers inhabiting upon or near the borders, being men me, and friended and allied with divers in thoſe parts, who commonly known to be great robbers, and ſpoil-takers, n the ſaid counties, to the end thereby to be by them pro- d from the danger of ſuch as uſed to rob and ſteal in thoſe ;" and thereupon it is enacted, "That whoſoever ſhall at y time hereafter, without good and lawful warrant or au- rity, take any of her majeſty's ſubjects againſt his or their ll or wills, and carry them out of the ſame counties, or ain, force, or impriſon him or them, as priſoners, or ainſt his or their wills, to ranſom them, or to make prey ſpoil of his or their perſon, or goods, upon deadly feud or erwiſe: or whoſoever ſhall be privy, conſenting, aiding, aſſiſting unto any ſuch taking, detaining or carrying away, procure the taking, detaining, or carrying away of any h perſon or perſons priſoners as aforeſaid: or whoſoever ll take, receive, or carry, to the uſe of himſelf, or wit- gly to the uſe of any other, any money, corn, cattle, or her conſideration, commonly called black-mail, for the otecting, or defending of him or them, or his or their lands, ements, goods, or chattels, from ſuch thefts, ſpoils, and bberies, as is aforeſaid: or whoſoever ſhall give any ſuch oney, corn, cattle, or other conſideration, called black-mail, r ſuch protection as is aforeſaid, and ſhall be of the ſaid ſe- ral offences, or of any of them, indicted and lawfully con- cted, or ſhall ſtand mute, or ſhall challenge peremptorily ove the number of twenty before the juſtices of aſſizes, ſtices of gaol delivery, juſtices of oyer and terminer, or ſtices of peace, within any of the ſaid counties, at ſome of eir general ſeſſions, within ſome of the ſaid counties to be olden, ſhall be reputed, adjudged, and taken to be as felons, nd ſhall ſuffer pains of death, without any benefit of clergy, c.

Sect. 2. By 13 & 14 Car. 2. c. 22. made a public act 6 Geo. 2. c. 37. and perpetual by 31 Geo. 2. c. 42. he juſtices of the peace of the reſpective counties of Cum- rland and Northumberland, or the major part of them, t any general ſeſſions, may in open court, make an order r charging the inhabitants proportionally, for the ſecuring e ſaid ſeveral counties from the depredations of the *moſs troopers*; ſo as Northumberland be not charged above 500l. or Cumberland above 200l. a year: and they may appoint 30 men

" 30 men in Northumberland, and 12 men in Cumber
" under respective commanders, to apprehend offenders,
" der pain of fine and imprisonment for neglect of duty.
" *vide* 29 & 30 Car. 2. c. 2. which obliges the justi
" take security, &c."

† *Sect.* 3. By 18 Car. 2. c. 3. "The benefit of cler
" taken away from great, known, and notorious thi
" and spoil-takers in the said counties of Northumberland
" Cumberland, for theft done within the same; but the
" tices of assize may transport them for life."

For the process of apprehending offenders who shall escape into Scotland, vide 13 Geo. 3. c. 31. And for the riot act 1 Geo. 1. st. 2. c. 5. Infra, c. 65. s. 56.

CHAPTER THE FIFTY-SEVENT

OF OFFENCES BY BANKRUPTS AND SOLVENT DEBTORS.

(The 4 Ann. c. 17. and 5 Ann. c. 22. recited in the former edition are expired.)

IT is enacted by 5 Geo. 2. c. 30. continued by 21 3. c. 29. s. 8. "That if any person or persons have come bankrupt, or who shall at any time hereafter be bankrupt within the intent and meaning of the several tutes made and now in force concerning bankrupts, or of them, and against whom a commission of bankrupt der the great seal of Great Britain hath been awarded issued out, or shall at any time hereafter be awarded and sued out, whereupon the person or persons against w such commission hath issued (a) or shall issue, have or been, or shall be declared bankrupt or bankrupts, shall within forty-two days after notice thereof in writing, left at the usual place of abode of such person or per or personal notice, in case such person or persons be the prison, and notice given in the London Gazette that commission or commissions is are or have been issu and of the time and place of a meeting of the commis ers therein named, or the major part of them, surre him, her, or themselves to the said commissioners name the said commission, or the major part of them, and or subscribe such surrender, and submit to be exam from time to time upon oath, or being the people ca *quakers*, upon the solemn affirmation by law appointed such people, by and before such commissioners, or the jor part of them, by such commission authorised, and in things conform to the several statutes already made and in force concerning bankrupts; and also upon such her, or their examination, fully and truly disclose and disc all his, her, or their effects (b) and estate real and personal, how and in what manner, to whom, and upon what consid tion, and at what time or times he she or they have hath disposed of, assigned, or transferred any of his, her

(a) There is a particular provision in the act to prevent their being maliciously sued out, but the injured trader may likewise bring an action on the case against the offender, 3 Burr. 1419.

(b) The commissioners cannot break open any but the bankrupt's house to search for concealed effects. 2 Shower 247.

r goods, wares, merchandizes, monies, or other eſtate effects, (and all books, papers, and writings relating reto) of which he, ſhe, or they was or were poſſeſſed, in or to which he, ſhe, or they was or were any ways reſted or intitled, or which any perſon or perſons had, hath, or have had in truſt for him, her, or them, or for her, or their uſe, at any time before or after the iſſuing he ſaid commiſſion, or whereby ſuch perſon or perſons, his, her, or their family or families, hath or have or may ve or expect any profit, poſſibility of profit, benefit or adntage whatſoever, except only ſuch part of his, her or their ate and effects, as ſhall have been really and *bonâ fide* ſold diſpoſed of in the way of his, her or their trade and dealgs; and except ſuch ſums of money as ſhall have been laid in the ordinary expence of his, her or their family or milies; and alſo upon ſuch examination deliver up unto the id commiſſioners by the ſaid commiſſion authoriſed, or the ajor part of them, all ſuch part of his, her, or their the id bankrupt's goods, wares, merchandizes, money, eſtate d effects, and all books, papers, and writings relating there-, as at the time of ſuch examination ſhall be in his, her, or eir poſſeſſion, cuſtody or power, (his, her, or their neceſry wearing apparel, and the neceſſary wearing apparel of e wife and children of ſuch bankrupt only excepted) then , ſhe, or they the ſaid bankrupt or bankrupts in caſe of any fault and wilful omiſſion in not ſurrendering and ſubmitting) to be examined as aforeſaid; or in caſe he, ſhe, or they all remove, conceal, or embezzle any part of ſuch his, her, r their eſtate real or perſonal to the value of twenty pounds, r any books of accounts, papers, or writing relating thereto, ith an intent to defraud his, her, or their creditors, (and eing thereof lawfully convicted by judgment or information) hall be deemed and adjudged to be guilty of felony, and hall ſuffer as felons without benefit of clergy, (2) or the beefit of any ſtatute made in relation to felons; and in ſuch caſe uch felons goods and eſtate ſhall go and be divided among the reditors ſeeking relief under ſuch commiſſion."

Vide Cooke's Bankrupt laws, chap. 6.

The Bankrupt's wife cannot be examined. 1 P. Wms. 611.

(1) Vide the caſe *Ex parte* Lingood, 1 Atkins 240.

) As this is a ſeverely penal law, reaching the life of the bankrupt, a court of equity not lend its aid to the proſecution, by ordering the clerk of the commiſſion to attend he Old Baily with the proceedings under the commiſſion; but the party muſt prove both a bankrupt and a felon, within the meaning of the act. Cooke's Bankrupt s 104, 106. So alſo in the commitment by the commiſſioners, the act muſt be ſtricturſued. 1 Salk. 348. 2 Black. 1144. 2 Strange 880.

Sect. 2, But it is provided by the ſaid ſtatute, par. 3. That it ſhall and may be lawful to and for the ſaid chancellor, or lord keeper, or commiſſioners for the cuſtody of the great ſeal for the time being, to enlarge the time for ſuch perſon or perſons ſurrendering him, her, or themſelves, and diſcloſing and diſcovering his, her, or their eſtate and

effects

" effects as aforesaid, as the said lord chancellor, lord k
" or such commissioners shall think fit, not exceeding fifty
" to be computed from the end of the forty-two days, (*vid*
" *second section of the act*) so as such order for enlarging the
" be made six days at least before the time on which such p
" or persons was or were so to surrender him, her, or th
" selves, and make such discovery as aforesaid."

Cooke's B. L. 288.
5 Mod. 309.
Comb. 391.
2 Black. 1035.
1 Atk. 204, 289.
L. Raym. 153.

† *Sect.* 3. And it is further enacted, par. 21. " T
" whoever shall have accepted of any trust, and shall wil
" conceal or protect any part of the bankrupt's estate and e
" from the creditors, and shall not discover the same within
" ty-two days after the commission issues, either to the com
" sioners or assignees, or submit to be examined (1) by the
" missioners, shall forfeit 100 l. and double the value of the
" perty concealed.

(1) If a bankrupt absconds, or is likely to run away between the time of the com sion issued and the last day of surrender, he may by warrant from any judge or just peace, be apprehended and committed to the county gaol. 2 Comm. 481. See also rott's case. Green 197, 204. Burr. 1123. Cooke's Bank, laws 282, 283, 107.

Explained by 29 Geo. 2. c. 28.

† *Sect.* 4. Secondly, " And whereas several persons who prisoners for debt, chuse rather to continue in prison and s their substance there, than discover and deliver up to their ditors their estates and effects," It is therefore enacted by Geo. 2. c. 13. s. 39. " That any one or more of the cr
" tors of any prisoner at whose suit he or she is detained in
" son, upon 20 days notice in writing to such prisoner and
" person in whose custody he is, to require the keeper of
" prison to bring such prisoner before the justices at their
" general or quarter sessions of the peace, or any adjourn
" thereof for the county or place, together with a copy of
" cause of his detainer, and such prisoner shall then, at the
" quest of a creditor, be obliged to deliver in upon oath,
" subscribe a schedule of his estate and effects (in the ma
" directed by the act) to be vested, assigned, and equall
" vided for the benefit of his creditors, and on conviction of
" ful perjury therein, or if such prisoner so brought u
" aforesaid shall neglect or refuse to deliver in and subsc
" such schedule within forty days, such offender shall s
" death without clergy."

CHAPTER THE FIFTY-EIGHTH.

OF OFFENCES BY COUNTERFEITERS BANK-NOTES, EXCHEQUER-BIL STAMPS, SOUTH-SEA BONDS, LOTTE ORDERS, &c.

To erase the usual mark made with red ink across the *face* of

AND first as to counterfeiters of bank-notes, it is e ed by 8 & 9 Will. 3. c. 20. s. 36. " That the for
" or counterfeiting the common seal of the governor
" com

pany of the bank of England, or of any ſealed bank-bill, e or given out in the name of the ſaid governor and com-, for the payment of any ſum of money, or of any bank- of any ſort whatſoever, ſigned for the ſaid governor and pany of the bank of England, or the altering or raiſing any orſement on any bank-bill, or note of any ſort, ſhall be dged to be felony without benefit of clergy."

a bank note, to denote that it has been paid, is eraſing an *indorſement* within the meaning of this act, 1 Str. 18. 3 P. Wms. 419.—So alſo the amount of the ſum for which a bank note is made, is a forging, and counter- of the bank note. 1 Str. 19. And in forging the name; the caſhier whoſe name to the note is an admiſſable witneſs to prove it forged. O. B. 1784. p. 345, 837.

ct. 2. And it is alſo enacted by 11 Geo. 1. c. 9. f. 6. t whoever ſhall alter, forge, or counterfeit any bank-bill ote of the bank of England, or bank-note of any ſort ſoever; or ſhall eraſe or alter the ſame, or any indorſe- thereon; or ſhall tender in payment, utter, vend, ex- ge, or barter any ſuch altered, forged, or counterfeited or note, or any eraſed or altered bill or note, or the in- ement thereon; or ſhall knowingly demand to have the exchanged for ready money, with intention to defraud, ſuffer as in *caſes of felony*."

Vide the caſe of Rex v. Elliot, Kent Aſſizes, July 1777, and the caſe of Rex v. Dick, on the forgery of a Scotch Bank note.

ct. 3. And it is further enacted by 12 Geo. 1. c. 32. "That whoever ſhall forge, or procure to be forged, or in forging the name or hand of any of the caſhiers to any ument or writing whatſoever, for and in order to obtain roperty of any of the ſuitors of the court of chancery; or inſtrument or writing made by any of the ſaid caſhiers intention to defraud any perſon whatſoever ſhall ſuffer h without clergy."

Moor 666. Show 135.

ct. 4. And it is further enacted by 15 Geo. 2. c. 13. "That whoever ſhall alter any bank-note, bank-bill, dend, warrant, bond or obligation under the common of the bank of England, or any indorſement thereon, or offer to, or diſpoſe of, or put away the ſame, or ſhall and the money, or any part thereof of the ſaid company, ſervants, or other perſon knowingly, to defraud the company, their ſucceſſors, or any other perſon, ſhall ſuf- death without clergy."

ct. 5. And whereas frauds have been committed by the notes and bills of the governor and company of nk of England, notwithſtanding the ſtatutes now in for puniſhing and ſuppreſſing the ſame, it is therefore by 13 Geo. 3. c. 79. "That whoever (other than officers or agents of the ſaid company authorized, ap- ted and employed for that purpoſe) ſhall make or uſe, cauſe or procure to be made or uſed, or knowingly aid aſſiſt in the making or uſing; or (without being autho- d as aforeſaid) ſhall knowingly have in their cuſtody or ſſion (without lawful excuſe, the proof whereof ſhall

lie

" lie upon the perſon accuſed) any frame, mould, or
" ment, for the making of paper with the words *Bank*
" *land* viſible in the ſubſtance of ſuch paper; or ſhall
" or cauſe or procure to be made, or knowingly aid
" in the making any paper in the ſubſtance of which
" words *Bank of England* ſhall be viſible—or if any perſon
" cept as before excepted) ſhall by any art, myſtery,
" trivance cauſe or procure the ſaid words *Bank of England*
" appear in the ſubſtance of any paper whatſoever, ſhall
" death without benefit of clergy."

† *Sect.* 6. And by par. 2. " Whoever, without
" authorized as aforeſaid, ſhall engrave, cut, etch, or
" mezzotinto, or ſhall cauſe or procure the ſame to be
" or ſhall aid or aſſiſt in ſo doing, in or upon any plate
" per, braſs, ſteel, pewter, or of any other metal, or
" of metals, or upon wood or any other material, or any
" whatſoever, any promiſſory note, inland bill, or bill
" change, or blank promiſſory note, inland bill, or bill
" change, or part of the ſame containing the words *Bank*
" *land*, or *Bank poſt bill*, or any word or words expreſſ
" ſum or amount, or any part of the ſum or amount
" promiſſory note, inland bill, or bill of exchange, in
" ters or figures on a black ground; or ſhall uſe any ſuch
" ſo engraved, or any other inſtrument for the making
" ing of ſuch promiſſory note, &c.—or ſhall knowingly
" their cuſtody any ſuch plate or inſtrument, or ſhall
" ly and wilfully utter any ſuch promiſſory note, &c.
" committed to the common gaol of the county or place
" the offence ſhall be committed, for any ſpace not exceeding
" months.—But this act ſhall not extend to perſons carrying
" notes for payment, &c."

† *Sect.* 7. Secondly, As to counterfeiters of exchequer
bills, it is enacted by 25 Geo. 3. c. 2. " That if any
" or perſons ſhall forge or counterfeit any exchequer
" which ſhall have been made forth by virtue of this act
" fore the ſame ſhall be paid off and cancelled, or any
" quer-bills to be received or made forth in purſuance
" this act, or any indorſement or writing thereupon or
" in, or tender in payment any ſuch forged or counterfeit
" bill, or any exchequer-bill with ſuch counterfeit
" ment or writing thereon, or ſhall demand to have
" counterfeit bill, or any ſuch exchequer-bill with ſuch
" terfeit indorſement or writing thereon or therein, exchanged
" ed for ready money by any perſon or perſons, bodies
" bodies politick or corporate, who ſhall be obliged
" quired to exchange the ſame, or by any other perſon
" perſons whatſoever, knowing the bill ſo tendered in payment
" or demanded to be exchanged, or the indorſement
" writing thereupon or therein to be forged or counterfeit

d with intent to defraud his majeſty, his heirs and ſucceſſors, the perſons to be appointed to pay off the ſame, or any of em, or to pay any intereſt thereupon, or the perſon or perns, body or bodies politick or corporate, who ſhall contract circulate or exchange the ſame, or any of them, or any her perſon or perſons, body or bodies politick or corporate, en every ſuch perſon or perſons ſo offending, being thereof wfully convicted, ſhall be adjudged a felon, and ſhall ſuffer in caſes of felony without benefit of clergy."

Sect. 8. By 9 Geo. 1. c. 12. for the more eaſy transferring in exchequer annuities, "Whoever ſhall forge or counterit, or ſhall procure, &c. or aid in the forging or counterfeitg any order made forth in purſuance of this act, or of the Geo. 1. c. 11. 6 Geo. 1. c. 17. 7 Geo. 1. c. 30. 8 Geo. c. 20. or any aſſignment of ſuch order, or of the annuities yable thereon, or of any receipt or diſcharge to the exchener for the annuities due, or to grow due on ſuch order, or y authority to transfer ſuch order or annuities. Or ſhall rge, &c. the name of any of the proprietors, &c. or ſhall enavour to receive ſuch annuities, or any part thereof, by vire of ſuch forged authority, or ſhall perſonate any true and al proprietor of the ſaid orders, and receiving, or endeavourg to receive the money of ſuch proprietor, as if ſuch offender ere the true and lawful owner thereof, ſhall be guilty of lony without clergy."

Vide alſo 4 Geo. 2. c. 9. 9 Geo. 2. c. 34. 11 Geo. 2. c. 27.

Sect. 9. Thirdly, As to counterfeiters of ſtamps, it is enacty 5 Will. & Mar. c. 21. ſ. 11. which is the firſt act upon the ect, "That whoever ſhall counterfeit or forge any ſtamp or ark, to reſemble any ſtamp or mark which ſhall be provided made in purſuance of this act, or ſhall counterfeit or reſeme the impreſſion of the ſame upon any vellum, parchment, or per, thereby to defraud their majeſties, their heirs and ſucſſors, of any of the duties hereby granted, or ſhall utter, nd, or ſell any vellum, parchment or paper, with ſuch unterfeit mark or impreſſion thereupon, knowing ſuch mark impreſſion to be counterfeited, ſhall ſuffer death without e benefit of clergy."

The following acts have alſo impoſed ſtamp duties, and contain the ſame clauſe againſt the forging or counterfeiting of them.
5 W. and M. c. 21.
6 Will. 3. c. 6.
6 Will. 3. c. 12.
7 Will. 3. c. 35.
8 Will. 3. c. 20.

ill. 3. c. 25. 9 Will. 3. c. 44. 1 Ann. c. 13. 1 Ann. ſ. 2. c. 22. 4 Ann. c. 12. n. c. 16. 5 Ann. c. 8. 5 Ann. c. 19. 6 Ann. c. 5. 8 Ann. c. 9. 9 Ann. c. 21. n. c. 23. 10 Ann. c. 19. 10 Ann. c. 26. 12 Ann. ſ. 1. c. 2. 12 Ann. ſ. 2. c. 9. o. 1. ſ. 2. c. 12. 3 Geo. 1. c. 9. 5 Geo. 1. c. 19. 6 Geo. 1. c. 4. 6 Geo. 1. c. 21. eo. 1. c. 8. 11 Geo. 1. c. 30. 11 Geo. 1. c. 33. 2 Geo. 2. c. 23. 9 Geo. 2. c. 32. eo. 2. c. 19. 16 Geo. 2. c. 26. 18 Geo. 2. c. 22. 20 Geo. 2. c. 45. 23 Geo. 2. . 23 Geo. 2. c. 26. 29 Geo. 2. c. 12. 29 Geo. 2. c. 13. 30 Geo. 2. c. 19. eo. 2. c. 35. 2 Geo. 2. c. 36. 5 Geo. 3. c. 35. 5 Geo. 3. c. 46. 5 Geo. 3. c. 47. o. 3. c. 46. 7 Geo. 3. c. 44. 8 Geo. 3. 25. 12 Geo. 3. c. 48. 13 Geo. 3. c. 65. eo. 3. c. 34. 17 Geo. 3. c. 50. 19 Geo. 3. c. 66. 20 Geo. 3. c. 28. 21 Geo. 3. . 22 Geo. 3. c. 33. 23 Geo. 3. c. 49. 23 Geo. 3. c. 58. 23 Geo. 3. c. 67. eo. 3. c. 7. 25 Geo. 3. c. 50.

† *Sect.* 10. But by 13 Geo. 3. c. 56. "Whoever ſhall
"forge, or counterfeit any mark or ſtamp (a) uſed for
"of gold and ſilver plate, in purſuance of 12 Geo. 2. c.
"any other act, or ſhall counterfeit any ſtamps or impreſſ
"reſemble that uſed by the goldſmiths company, or ſhall
"poſe the ſame from one piece of wrought plate to another,
"to to any piece of baſe metal, or ſhall ſell, exchange, or
"poſe to ſale, or export out of this kingdom any wrought
"of gold or ſilver, or any veſſel of baſe metal, with ſuch
"terfeited mark thereon, or any mark, ſtamp, or impreſ
"which ſhall have been tranſpoſed or removed from any
"piece of plate, or be poſſeſſed of any mark or ſtamp
"ſhall be forged in imitation as aforeſaid, their procurers,
"ſhall be tranſported for fourteen years.—And by 24 Geo.
"c. 53. ſect. 16. to commit this offence in the manner deſcri
"by that act, is felony without benefit of clergy."

(a) One of the marks is a lion *paſſant*; if therefore an indictment deſcribe the lion to be *rampant*, it is vicious, and the priſoner muſt be acquitted. O. B. 1786, p. 790.

By the 24 Geo. 3. c. 20. the manufactures of Sheffield are excluded from the operation of this act, under the regulation therein mentioned.

† *Sect.* 11. Fourthly, As to counterfeiters of South-ſea bo
it is enacted by 9 Annæ 21. c. 27. ſ. 51. "That if any pe
"or perſons ſhall forge or counterfeit the common ſeal of
"South-ſea company, or ſhall forge, counterfeit, or alter
"bond or obligation under the common ſeal of the ſaid com
"or ſhall offer to diſpoſe of, or pay away any ſuch forged,
"terfeited, or altered bond, (knowing the ſame to be ſuch
"ſhall demand the money therein contained, or pretended
"due thereon, or any part thereof, of the ſaid company, or
"their officers, knowing the ſame to be forged, counterfeited
"altered, with intent to defraud the ſaid company, or any
"perſon or perſons, every ſuch offender ſhall ſuffer as a
"without the benefit of clergy."

6 Geo. 1. c. 4. ſ. 56.
6 Geo. 1. c. 11. ſ. 50.
12 Geo. 1. c. 32. ſ. 9.

† By 8 Geo. 1. c. 22. "Whoever ſhall forge or cou
"feit, or procure to be forged or counterfeited, or ſhall know
"and wilfully aid or aſſiſt in the forging or counterfeiting
"letter of attorney, or other authority or inſtrument to tra
"aſſign, ſell, or convey any ſhare or part thereof in any
"tal ſtock and funds of the South-ſea company; or to re
"any South-ſea annuity or dividend, or any part thereof,
"ſhall forge or counterfeit, or procure to be forged or cou
"feited, or ſhall knowingly and wilfully aid or aſſiſt in
"forging or counterfeiting the name of any of the propri
"of any ſuch ſhare in ſtock, or of any perſons intitled to ſuch
"nuity or dividend, or to any ſuch pretended letter of atto
"inſtrument, or authority;—or ſhall knowingly and fraudu
"ly demand, or endeavour to have any ſuch ſhare or ſtock
"any part thereof transferred, aſſigned, ſold, or conveyed
"ſuch annuity or dividend, or any part thereof to be re

irtue of any ſuch counterfeit or forged letter of attorney, ority, or inſtrument;—or ſhall perſonate any true and proprietor of the ſaid ſhares, annuities or dividends, and by receive, or endeavour to receive the money for the , as if ſuch offender were the lawful owner thereof, ſhall uilty of felony without clergy."

. 12. Fifthly, As to counterfeiters of lottery orders, it ted by 25 Geo. 3, c. 57. "That if any perſon or per- ſhall forge or counterfeit, or cauſe or procure to be forged ounterfeited, or willingly act or aſſiſt in the forging or terfeiting any ticket or tickets, certificate or certificates, r or orders, made forth by virtue of this preſent act, or former act made for eſtabliſhing any lottery or lotteries, ltering any number, figure, or word therein, or utter, , barter, or diſpoſe of any ſuch falſe, altered, forged, ounterfeited ticket or tickets, certificate or certificates, or- or orders, or ſhall bring any ſuch forged or counterfeited et, certificate, or order, or any ſuch ticket, certificate, rder, the number whereof, or any figure or words therein have been altered (knowing the ſame to be ſuch) to the managers, or any of them, or to the caſhier or caſhiers, ccountant-general of the bank of England for the time be- or to any other perſon or perſons whatſoever, with a dulent intention; or ſhall willingly aid, abet, aſſent, hire, ommand any perſon or perſons to commit ſuch offence or ces as aforeſaid, ſuch offenders ſhall ſuffer death without gy."

. 13. And it is alſo enacted "That the managers and ctors, or any two or more of them, are authoriſed, re- ed and impowered to cauſe any perſon or perſons bringing ttering ſuch forged or counterfeit ticket or tickets, certifi- or certificates, as aforeſaid; or aiding, abetting, aſſiſting, g or commanding any perſon or perſons therein; to be ap- ended, and to commit him, her, or them to Newgate, or e county gaol.—And offenders (not in priſon) diſcovering ons guilty, are intitled to a reward of fifty pounds, and a ion."

. 14. Sixthly, As to other forgeries, It is enacted, By 1. c. 18. ſ. 13. and 14 Geo. 2. c. 37. "Whoever ſhall e or counterfeit the common ſeal of either the London, or Royal Exchange Aſſurance corporations, or ſhall forge, terfeit, or alter any policy, bill, bond or obligation under common ſeal; or ſhall knowingly offer to diſpoſe of, or away any ſuch policy, bill, bond, or obligation; or ſhall and the money for the ſame, or any part thereof, of or ſuch of the ſame corporations as ſhall be mentioned or rred to therein, or any of their officers, ſhall ſuffer death out clergy."

For the offence of forging the teſtimonial of a juſtice by a wandering ſailor or ſoldier, vide ante. c. 48. ſ. 2.

† *Sect.* 15. By 12 Geo. 1. c. 32. ſ. 9. "Whoever ſhall
" or counterfeit, &c. the name or hand of the accountant-ge
" regiſter, clerk of the report-office in chancery, in order t
" tain the money of any of the ſuitors of the ſaid court of
" cery;—or any inſtrument or writing made by ſuch accou
" general, regiſter or clerk, with intent to obtain the m
" aforeſaid;—or ſhall forge or counterfeit any bond or o
" tion under the common ſeal of the Eaſt-India company
" any indorſement or aſſignment thereon, or ſhall know
" publiſh the ſame, with intention to defraud any perſon
" ſoever, ſhall ſuffer death without clergy."

Vide O.B. 1784, p. 241. O. B. 1785, p. 654.

† *Sect.* 16. By 2 Geo. 2. c. 25. made perpetual by 9
2. c. 18. "Whoever ſhall falſly make, forge, or counte
" or ſhall cauſe or procure, &c. or ſhall wilfully act o
" in falſly making, forging, or counterfeiting any deed,
" will, teſtament, bond, writing obligatory, bill of exc
" promiſſory note for the payment of money, indorſem
" aſſignment of any bill of exchange, or promiſſory note f
" payment of money, (2) or any acquittance or receipt
" (3) for money or goods, with intention to defraud any
" whatſoever, and by 31 Geo. 2. c. 22. ſ. 78. with in
" to defraud any corporation whatſoever; or ſhall, with t
" intent, knowingly utter or publiſh the ſame as true, ſha
" fer death without clergy."

(1) A deed, forged in the name of a perſon who never had exiſtence, is with
ſtatute; for the ſtatute doth not uſe the words *the deed of any perſon*, or the *deed*
ther, or any words of the like import, but *any deed*. Lord Coke's deſcription of
3 Inſt. 169, viz. "When the act is done in the name of another perſon," is ap
too narrow, and taketh in only that ſpecies of forgery which is moſt commonly
tiſed; but there are many other ſpecies of forgery which will not come within the
of that deſcription. Foſter 116. So alſo where a perſon in poſſeſſion of a pro
note, which had been loſt, indorſes it in a fictitious name in order to get it diſcount
is guilty of forgery. Rex v. Tuft, Leiceſter Lent Aſſizes, 1777. M. S.

(2) At Kent Summer Aſſ. 1777. James Elliot was indicted, among other c
"For forging a promiſſory note for the payment of money, with intention to defra
Bank, &c." It was intended to counterfeit a bank note, but the inſertion of the
" pounds" was omitted to be put after the ſum; the £. however, was placed as u
the corner, there was no water mark, " Bank of England," and the paper wa
thicker quality. The jury thought the ſum mentioned meant pounds, and the p
was found guilty. It was objected that it was not a note for the payment of
becauſe the word deſcriptive of money was omitted. Secondly, That the water m
being in it, it could not be intended to defraud a corporation. On reference the
held the conviction good, for that perfect ſimilitude is not neceſſary, but if made
an aptneſs to impoſe, it is ſufficient. The water mark is not eſſential, for the B
not obliged to uſe it, and it is enough if the tenor of the note imports a promiſe fo
corporation to pay. Trin. Term, 17 Geo. 3. M. S.

(3) In ſetting out a forged receipt in an indictment upon this act, the words "
lows" is a ſufficient averment that the tenor of it is ſet out. And it is only neces
aver a general intent to defraud, without ſtating the manner in which the fraud w
accompliſhed. Rex. v. Powel. Black. 787. So alſo in forgery of a will, it is
ceſſary to charge the priſoner with forging *the laſt will*, &c. To charge it "a pap
ing, purporting to be the laſt will, &c." is ſufficient. 2 Black. 790.

Sect. 17. By 4 Geo. 2. c. 18. "Whoever ſhall forge, &c. any paſs, commonly called a Mediterranean paſs, for any ſhip whatſoever, or ſhall counterfeit the ſeal of office, or the hand of the lord high admiral, or of any of the commiſſioners of the ſaid office, to any ſuch paſs;—or ſhall alter any the paſs made out by the admiralty, or ſhall knowingly utter and publiſh the ſame as true; the offence may be tried in any county, and the offender ſhall ſuffer death without clergy."

Sect. 18. By 7 Geo. 2. c. 22. "whoever ſhall falſly make, alter, forge, or counterfeit, or cauſe or procure, &c. or ſhall act or aſſiſt in falſly making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for the payment of money, or any warrant or order for payment of money, or delivery of goods, (4) with intention to defraud any perſon whatſoever; (and by 18 Geo. 3. c. 18. with intention to defraud any corporation whatſoever)—or ſhall, with the ſame intent, knowingly utter or publiſh the ſame as true, ſhall ſuffer death without clergy." O. B. 1784, p. 277, 1011.

(4) A forged order to a ſhop-keeper to let the bearer have goods, concluding "and I will ſee it all paid for," is not a warrant or order within the meaning of this act; for the perſon ſuppoſed to give ſuch warrant or order ſhould have, or claim at leaſt an intereſt in the money or goods which are the ſubject matter of the order. Foſter 120.—So in the caſe of George Williams, at Southampton ſummer circuit, 1775, for forging an order on Mr. Guildmare, of Goſport, in the name of William Robinſon, for the delivery of five barrels of tar; the judges were all of opinion, that, upon the authority of the caſe in Foſter, that it was not within the ſtatute, though moſt of them ſaid, had it been *integra*, they would have thought otherwiſe.—So, "Pleaſe to ſend ten pounds by the bearer, as I am ſo ill I cannot wait upon you," is not an order within the meaning of the act. For it is not compulſory; nor ſuch an order, as the party giving it, if genuine, has a right to make. O. B. 1783, p. 835.—But where a perſon having delivered a parcel of ſilver goods to the Goldſmiths company to be aſſayed, two perſons took an opportunity to obtain them by a forged order in the name of the owner, ſuch order is within the ſtatute. O. B. 1784, p. 1271. So alſo where a man purchaſes goods, and takes a ſmall part away with him, and coming afterwards to pay for them, receives money in difference on a draft, ſigned in the name of a perſon unknown, who did not keep caſh with the broker to whom it was directed, all the judges were of opinion it is within the ſtatute. R. v. Lockett, 1773. M. S.

† Sect. 19. By 8 Geo. 2. c. 6. ſ. 31. "Whoever ſhall forge or counterfeit any entry of the acknowledgment of any bargainor, in bargain and ſale, in the regiſtry of York, whereby the freehold or inheritance of any perſon ſhall be moleſted, ſhall incur the penalties of 5 Eliz."

† Sect. 20. By the marriage act 26 Geo. 2. c. 33. ſ. 16. Whoever with intent to elude the force of this act, ſhall inſert, or cauſe to be inſerted in the regiſter-book, any falſe entry of any matter or thing relating to any marriage, or ſhall falſe make, alter, forge, or counterfeit any ſuch entry in ſuch regiſter,—or any licence of marriage,—or ſhall cauſe or procure the ſame to be done, &c. or ſhall utter or publiſh the ſame as true,—or ſhall deſtroy any regiſter-book of

"marriages,

" marriages, with intent to avoid any marriage, or to ſubject
" perſon to the penalties of this act."

By 9 Geo. 3. c. 30. ſ. 5. the treaſurer, comptroller, ſurveyor, clerk of the acts, or any commiſſioner of the navy may act as juſtice, in cauſing the offenders to be apprehended and brought to juſtice; and all officers ſhall obey their warrants accordingly.

O. B. 1784, p. 98.

† *Sect.* 21. By 31 Geo. 2. c. 10. ſ. 24. " Whoever
" perſonate or falſly aſſume the name or character of any
" ſeaman, or other perſon, intitled or ſuppoſed to be intitled
" any wages, pay, or other allowance of money, or prize-
" for ſervices done on board any of his majeſty's ſhips, or the
" ecutor, adminiſtrator, wife, relation or creditor of any
" officer, ſeaman, or other perſon, in order to receive
" the monies ſo due to ſuch perſon, and payable for ſuch
" vices as aforeſaid; or ſhall forge or counterfeit any
" attorney, bill, ticket, certificate, aſſignment, laſt will, (5)
" any other power or authority whatſoever, in order to
" any the monies ſo due to ſuch perſon, and payable for
" ſervices as aforeſaid; or ſhall take a falſe oath to obtain
" probate of any will or letters of adminiſtration in order
" ceive the payment of any the monies as aforeſaid; or ſhall
" or procure any of the ſaid offences to be committed, ſhall
" fer death without clergy."

(5) But the production of the probate is concluſive evidence in ſupport of the
Rex v. Vinant, Mich. 8 Geo. Strange 481, 671, 703. Wils. 75. 11 St. Tr. 213,
233. 1 Vezey 119, 284.

† And by the 9 Geo. 3. c. 30. ſ. 6. " Whoever ſhall
" ingly utter or publiſh as true, any falſe, forged, or
" feited letter of attorney, bill, ticket, certificate, aſſign
" laſt will, or any other power or authority, in order to
" the monies due to any officer, ſeaman, or other perſon,
" has really, or was ſuppoſed to have ſerved, &c. with
" to defraud any perſon whatſoever, ſhall ſuffer death
" clergy."

† *Sect.* 22. By 31 Geo. 2. c. 22. ſ. 77. And 4 Geo.
25. ſ. 15. " Whoever ſhall forge or counterfeit any letter
O. B. 1786, p. 689. " torney, or other authority or inſtrument to transfer, ſell,
" or convey any ſhare, or part thereof, of, or in any the
" tal ſtock or funds of any body politick or corporate now
" bliſhed, or which ſhall be eſtabliſhed by any act of parliam
" or to receive any dividend attending any ſuch ſhare; or
" ceive any annuity in reſpect whereof any proprietor ſhall
" a transferrable ſhare; or ſhall forge or counterfeit the
O. B. 1784, p. 227. " any proprietor of ſuch ſhare, annuity, or dividend, or
" the perſons intitled to any ſuch annuity or dividend, in
" any ſuch pretended letter of attorney, inſtrument, or
" rity, or ſhall demand to have any ſuch ſhare, or part
" transferred, aſſigned, ſold, or conveyed, or any ſuch
" dividend, or part thereof, to be received by virtue of
" forged authority; or ſhall perſonate any true and real
" tor, (5) and thereby endeavour to receive the

(5) The proprietor whoſe ſtock is transferred by ſuch

such proprietor, as if such offender were the true d lawful owner thereof; or shall procure or aid the com- ssion of any of the said offences, shall suffer death without rgy."

forged power of attorney, is not an admissable witness to prove the forgery. 2 Strange 728.

Sect. 23. By 32 Geo. 2. c. 14. s. 9. "Whoever shall ge or counterfeit the mark or hand of the receiver of the t fines due to the crown or its grantees, whereby such ceiver shall be defrauded or any other person suffer loss, shall procure the same to be done, shall suffer death with- t clergy."

Sect. 24. By 3 Geo. 3. c. 16. "Whoever shall personate, falsely assume the name and character of an out-pensioner Greenwich hospital, in order to receive the out pension ue to him or to procure any other to do the same, shall guilty of felony without clergy."

Sect. 25. By 4 Geo. 3. c. 24. s. 8. "Whoever shall ounterfeit the hand writing of any person whatsoever, in the perscription of any letter or packet to be sent by the post, order to avoid the payment of the duty of postage, shall guilty of felony, and transported for seven years.

And by Sect. 2. if any officer misuse the seal of the office he shall forfeit five pounds.

FORGERY it is incumbent on the prosecutor to give the best evidence the case ad- s of, to prove that the forgery charged upon the prisoner is not the hand writing of the on whose deed or instrument it purports to be, before the prisoner shall be put upon defence; and consequently this proof will become more or less difficult in proportion he person, whose name or writing is charged to be forged, is more or less defined and tified, either by the instrument itself, or by the representation of the party uttering it. refore, where Sponsonby was indicted for forging the name of Pearce, the payee, on back of a bill drawn by Davis, the court would not permit Pearce to say, although he received advice of such a bill being drawn in his favour, that he was the payee, in ose favour Davis had drawn the bill, because Pearce may be the name of many others, o by possibility might have indorsed the bill, and as Davis was not present to define or ntify the payee, the prisoner was discharged. O. B. 1784, p. 831. and 1015. So where the name of John Churchill was forged on the back of a bill, the prosecutor ved the hand writing of the drawer, and produced one Henry Churchill, brother to a . John Churchill, who swore the indorsement was not his brother's hand writing; yet e could not prove that his brother was the identical person to whom the bill was made able, the evidence was rejected. O. B. 1784, p. 1015. But where the indictment ed that the instrument forged, "purported to be a bank note," but, in fact, it was y different, and distinguishable from that security, the court held that the defect could be supplied, so as to support the indictment, by any representations of the party at time he uttered it. Douglas 300.

APPEN-

APPENDIX THE FIRST.

OF OFFENCES AGAINST PROPERTY ADHERENT TO THE FREEHOLD.

Vide the recital of 43 Eliz. c. 7.

FORASMUCH as the unlawful cutting or taking away of corn growing, robbing of oarchards and gardens, digging up or taking away fruit trees, breaking of hedges, pales or other fences, cutting or ſpoiling of woods or underwoods and other offences of a ſimilar nature, have become more frequent and common than heretofore.

(a) Vide 37. Hen. 8. c. 6. ſ. 4. In a conviction upon this ſtatute the number and the nature of the trees muſt be ſet forth, 1 Salk. 181. Comy. 131. And a gentleman is within the act if he commits the offences. Ld. Ray. 901. So alſo the manner of ſtealing muſt be ſtated, that the court may judge whether felonious or not, or whether the money ordered to be paid was an adequate recompence to the party injured. Sayer 204, 205.

† *Sect.* 1. It is enacted by 43 Eliz. c. 7. (a) "That whoever ſhall cut or unlawfully take away any corn or grain growing, or rob any orchards or gardens, or break or cut any hedge, pales, rails, or fence, or dig up or take up any fruit tree, or trees in any orchard, garden, or elſewhere to the intent to take and carry the ſame away, or ſhall cut or ſpoil any woods or underwoods, poles or trees ſtanding not being felony by the laws of this realm, and their procurers, receivers, knowing the ſame, on conviction by confeſſion, or the oath of one witneſs, before one magiſtrate ſhall make compenſation at the diſcretion of the magiſtrate or be publicly whipped." And by 15 Car. 2. c 2. The conſtable may ſearch the houſes of ſuſpected wood ſtealers, and carry offenders before a juſtice, and if they do not "then and there give a ſatisfactory account how they came by the wood ſo found in their poſſeſſion" they ſhall be adjudged as convicted of the offences, and liable to the puniſhments of the 43d of Eliz.

Vide Rex. v. Aſton, in a conviction upon this ſtatute, "Igitur conſideratum eſt per me, *quod convictus eſt*," and the court held there ought to be a judgment quod *ſoris faciat* or quod *committatur*, &c." for the act gives no *pecuniary* forfeiture. 2 Burr. 1166.

† *Sect.* 2. And it is further enacted by 1 Geo. 1. c. 48. "That whoever ſhall maliciouſly break down, cut up, pluck up, throw down, bark, or otherwiſe deſtroy, deface, or ſpoil any timber tree, fruit tree, or any other tree, on conviction by any two juſtices of the place, or by the juſtices in ſeſſions, on complaint to them made by an inhabitant or the owner, &c. ſhall be kept to hard labour for three months, and whipped once a month; or if there be no houſe of correction, to any other priſon for four months, and whipped once in every month by the common hangman, and afterwards find ſureties for their good behaviour for two years, and the party grieved may recover damages and coſts from the inhabitants of the pariſh, &c. in the "ſame

manner and form as is directed by the 13 Edw. 1. ſt. 46. (a) for hedges and dykes overthrown by perſons night, unleſs the offender be convicted in ſix months the pariſh."

(a) Vide ch. 50, ſect. 1.

3. And it is further enacted by 6 Geo. 1. c. 16. whoever ſhall cut, take, deſtroy, break, throw down, pluck up, burn, deface, ſpoil, or carry away any ſprings, trees, poles, wood, tops of trees, underwoods, ice woods, thorns or quickſets, without the conſent of owner, or perſon chiefly entruſted with the care and dy thereof, ſhall, on conviction by two juſtices, or ſſions, be liable to the ſame penalties and puniſhments re inflicted by 1 Geo. 1. ſ. 2. c. 48. which conviction be final;—and unleſs the ſame be had within ſix ths, ſuch lords of manors, owners and proprietors who be injured by the offence, ſhall have ſuch remedy and ve ſuch compenſation from the pariſhes or places join- on ſuch wood ſprings, &c. as is directed by 13 Edw. 1, c. 46."

Vide 4 Burn's Juſtice, 399.

Vide 29 Geo. 2. c. 36. ſ. 8. for ſtealing or deſtroying trees growing in any waſte thereby directed to be incloſed.

4. And by the Black act 9 Geo. 1. c. 22. "Who- ſhall cut down, or otherwiſe deſtroy any trees planted ny avenue, or growing in any garden, orchard, or ation, for ornament, ſhelter, or profit; or ſhall forci- reſcue any perſon in lawful cuſtody for the ſame; or l by gift, or promiſe of money, or other reward, pro- any of his majeſty's ſubjects to join him or them in ſuch unlawful act, ſhall ſuffer death without benefit of gy."

5. And it is alſo enacted by 6 Geo. 3. c. 36. "That ever ſhall, in the night time, lop, top cut down, break, w down, bark, burn, or otherwiſe ſpoil or deſtroy, or y away any oak, beach, aſh, elm, fir, cheſnut, or aſp er tree, or by the 13 Geo. 3. c. 33. any poplar, alder, le, larch or hornbeam, or other trees ſtanding for tim- or likely to become timber, without the conſent of the r—Or ſhall in the night time pluck up, dig up, break, , or deſtroy, or carry away, any root, ſhrub, or plant, he value of five ſhillings, and which ſhall be growing, ing, or being in the garden ground, nurſery ground, or r incloſed ground of any perſon whomſoever, and their rs, abetters, or procurers, and the buyers and receivers he ſame, ſhall be tranſported for ſeven years."

O. B. 1784. p. 871. O. B. 1786. No. 116.

6. And it it further enacted by 6 Geo. 3. c. 48. whoever ſhall wilfully cut or break down, bark, burn, k up, lop, top, crop, or otherwiſe deface, damage, or deſtroy, or carry away any timber tree, *viz.* oak,

" beech

" beech, cheſnut, walnut, aſh, elm, cedar, fir, aſp,
(a) And by 13 Geo. 3. c. 33. poplar, alder, beach, maple, and hornbeam.
" ſycamore, and birch, (a) or any tree likely to become
" or any part thereof, or the lops or tops thereof, without
" conſent of the owner, or in any of his majeſty's fore
" chaſes, without the conſent of the ſurveyor, his depu
" perſon intruſted with the care of the ſame, on conv
" by one witneſs before one juſtice, ſhall forfeit for the
" offence, not exceeding twenty pounds, together with
The coſts and charges muſt be definitely aſcertained and expreſſed in the conviction, or it will be fatal. Cowp. 60.
" coſts and charges previous to and attending ſuch convic
" be aſcertained by the juſtice convicting, and on non-pay
" ſhall be committed to the common goal, for any time
" exceeding twelve months, nor leſs than ſix, or until the
" nalty and charges ſhall be paid.—For the ſecond offence,
" ſum not exceeding thirty pounds, and from twelve to
" teen months impriſonment as aforeſaid. And if any per
" convicted ſhall be guilty of the like offence a third time,
Quere. Ought not theſe words " *in like manner*, " to be omitted," for can it be imagined that the legiſlature intended a juſtice of
" ſhall be thereof convicted *in like manner* he ſhall be tra
" ted for ſeven years."

ſhould, in this ſummary manner, have power to tranſport an offender; and it ſeem
plied by ſubſequent words in the act,—" that for the third offence he ſhould be t
" a jury."

† *Sect.* 7. And it is further enacted by the ſaid ſtatute,
3. " That whoever ſhall pluck up, or cut, ſpoil, or de
" or take, or carry away, any root, ſhrub, or plant, o
" the fields, nurſeries, gardens, or garden grounds, or
" cultivated lands, of any perſon whomſoever, without the
" ſent of the owners, on conviction by one witneſs, befor
1 Hale 724. " juſtice, ſhall for the firſt offence forfeit not exceeding
" ſhillings, together with the charges previous to and atte
" ſuch conviction, to be aſcertained by ſuch juſtice, or be
" mitted to hard labour one month, and whipped. For th
" cond offence, not exceeding five pounds, &c and hard l
" for three months.—And if any perſon ſo before conv
" ſhall a third time commit the like offence, and be th
" convicted, the court before whom he ſhall be tried,
" have authority to tranſport him for ſeven years."

† *Sect.* 8. And by par. 4. " Whoever ſhall go int
" woods, underwoods, or wood grounds belonging to
" king's ſubjects, and ſhall there, cut, lop, top, or ſpoil,
" down, or damage, or otherwiſe deſtroy any kind of
" or underwood, poles, ſticks of wood, green ſtub
" young trees, or carry or convey away the ſame; or
" have in their cuſtody any kind of wood, underwood,
" ſticks of wood, green ſtubs, or young trees, and ſha
" give a ſatisfactory account how they came by the ſam
" conviction by one witneſs, before one juſtice, ſhall
" for the firſt offence, and pay immediately on conv

ſum not exceeding forty ſhillings, with coſts and charges aforeſaid. For the ſecond offence, not exceeding five nds, &c. and for the third offence, being duly convicted reof according to law, ſhall be deemed and puniſhed as an rrigible rogue: (a and whoever ſhall obſtruct the appre- ding of offenders ſhall forfeit ten pounds, or ſuffer ſix ths hard labour in the houſe of correction."

(a) That is, by 17 Geo. 2. c. 5. ſ. 9. he may be committed by the ſeſſions to

uſe of correction, not exceeding two years, nor leſs than three months, to be kept l labour, and whipped as the juſtices ſhall order.

Sect. 9. And it is further enacted by 9 Geo. 3. c. 41. " That the clauſe laſt above recited, ſhall extend to all majeſty's foreſts and chaſes within the realm, and to all every perſon or perſons who ſhall, without legal right or hority, by night or by day, cut down, deſtroy, take, carry, convey away any hollies, thorns, or quickſets growing or ng upon any of the king's foreſts or chaſes, or within the ods or wood-grounds of any af his ſubjects, or who ſhall leſs any hollies, thorns, or quickſets, and ſhall not give a isfactory account of the ſame, &c. The conviction to be rtified to the general quarter ſeſſions, and not be liable to quaſhed for want of form, or removed by certiorari."

Vide 10 Geo. 3. c. 30. which remedies a miſrecital of the 6 Geo. 2. c. 36, and 48 in this act.

By 4 Geo. 3. c. 31. keepers may ſeize implements of deſtruction for his or their own uſe.

Sect. 10. And it is enacted, by 29 Geo. 2. c. 36. ſ. 8. ded by 31 Geo. 2. c. 41. " That if any perſon ſhall unfully cut, take, deſtroy, break, throw down, bark, pluck burn, deface, ſpoil, or carry away any tree, growing in waſte, wood, or paſture, in which any perſon or perſons, bodies politick or corporate, hath, or have a right of comn, he ſhall incur the like penalty as by 6 Geo. 1. c. 16.

Sect. 11. Alſo it is enacted by the 13 Geo. 3. c. 32. hat whoever ſhall ſteal and take away, or maliciouſly pull or deſtroy any turnips, potatoes, cabbages, parſnips, peaſe, carrots growing or being in any garden, lands, or grounds, en or incloſed, on conviction within thirty days, by confeſn, or on the oath of one witneſs, before one juſtice, ſhall feit, not exceeding ten ſhillings over and above the value the goods ſtolen, to be diſtributed between, or wholly gin to, the owner and the poor; and on default of payment be committed to the houſe of correction not exceeding one onth, unleſs ſooner paid. The owner, or any inhabitant y be a witneſs, but if the conviction lie upon the oath of e owner, the whole penalty ſhall go to the poor. And by Geo. 2. c. 35. ſ. 5. the ſame puniſhment is inflicted upon ſtealing of madder roots."

" *Sect.*

Sect. 12. Alſo it is enacted by 25 Geo. 2. c. 10. "
Stealing ore out of mines, is not larceny at common law, upon the ſame principle of adherence to the freehold. 4 Comm. 234.
" whoever ſhall unlawfully break, or by force enter
" mine, wad-hole of wad, or black cawke, commonly
" black lead, or into any pit, ſhaft, adit or vein of wad,
" cawke, or black lead, with an intent to take and carry
" from thence any wad, black cawke, or black lead; or
" unlawfully from thence take and carry away any wad,
" cawke, or black lead, although ſuch mine, wad-hole,
" ſhaft, adit, or vein be not actually broke, or by force
" ed into by ſuch offender; or ſhall aid, abet, aſſiſt, hire,
" command any perſon or perſons to commit ſuch offence
" aforeſaid, ſuch offenders ſhall be guilty of felony, and
" be committed to the county gaol or houſe of correction for
" time not exceeding a year, and publickly whipped; or
" ſported for a term not exceeding ſeven years, as the court
" judge ſhall think proper."

† *Sect.* 13. Alſo it is enacted by 4 Geo. 2. c. 32. "
Vide 29 Geo. 2, c. 30. O. B. 1785. p. 824. Vide the caſe of the King v. Jane Carragan, tried before Glynn, recorder.
" whoever ſhall ſteal, rip, cut or break, with intent to ſteal
" lead, iron bar, iron grate, iron palaſadoes, or iron
" whatſoever, being fixed to any dwelling houſe, out
" coach houſe, ſtable, or other building uſed or occupied
" ſuch dwelling houſe, or thereunto belonging, or to any
" ing whatſoever, (1) or fixed in any garden, orchard,
" yard, fence, or outlet belonging to any dwelling houſe
" other building; their aiders, abetters, and aſſiſters, or
" ever ſhall knowingly buy or receive the ſame, ſhall be
" of felony, and the court is empowered to tranſport ſuch
" lons for the ſpace of ſeven years."

(1) Hickman was indicted for ſtealing lead from Hendon Church, which was laid to be the property. Firſt, of the Vicar; Secondly of the Church Wardens; Thirdly, the inhabitants and pariſhioners. The property being fixed to the freehold, (vide ch. 33. ſ. 21.) it was doubted whether it could be the ſubject of larceny; and if it could whether the property reſided as laid in any of the counts in the indictment. The judges were of opinion, Firſt, that "a Church" is included within theſe general words of the act, "or any other building whatſoever." Secondly, that the act having made the offence to conſiſt in "*ſtealing from any* dwelling houſe or other building, &c." the charge in the Indictment, that it was *ſtole from Hendon Church*, was alone a certain and ſufficient deſcription of the offence to ſupport the indictment; that the reſidence of the proſecutor was immaterial; and that the conviction was proper upon the firſt count. O. B. 1785. p. 782.

† *Sect.* 14. And it is further enacted by 21 Geo. 3. c.
" Whoever ſhall rip, cut, break or remove, with intent
" ſteal any copper, braſs, bell-metal, utenſil or fixture
" fixed to any dwelling houſe, out houſe, coach houſe,
" or other building uſed or occupied with ſuch dwelling
" or thereunto belonging, or to any other building
" ever, or fixed in any garden, orchard, court yard,
" outlet belonging to any dwelling houſe, or other
" — or any iron rails or fencing ſet up, or fixed in
" ſquare, court, or other place (ſuch perſon having no
" or claim of title thereto); or whoever ſhall be aiding,
" ting, or aſſiſting therein, or ſhall knowingly buy or

ſame, although the principal felon has not been convicted ſtealing the ſame, ſhall be guilty of felony, and the court ve power to tranſport ſuch offender for ſeven years, or to or- him or them to be detained in priſon, and therein kept to rd labour for any time not exceeding three years, nor leſs n one year; and within that time, if the court ſhall think he ſhall be once, or oftner, but not more than three times, blicly whipped."

APPENDIX THE SECOND.

OFFENCES against SHIPS in DISTRESS, and by PLUNDERERS of the WRECK.

IT is enacted by 12 Ann. ſ. 2. c. 18. "That all magiſ- "trates and officers of every county, corporation, and port own, near the ſea, on information of any ſhip being in diſtreſs, hall ſummon and call together as many civil officers, cuſtom- houſe officers, and other men, as ſhall be thought neceſſary or the aſſiſtance and preſervation of the ſaid ſhip, and ſhall demand of the ſuperior officers of any ſhip or veſſel which hall happen to be riding at anchor near the place, their aſ- iſtance by their boats, and ſuch hands as they can ſpare, and on refuſal or neglect thereof, ſuch ſuperior officer ſhall forfeit one hundred pounds.—And it is further enacted, that if any other perſon than ſuch as ſhall be empowered by the magiſ- trates as aforeſaid, ſhall enter or endeavour to enter on board any ſuch veſſel ſo in diſtreſs, without permiſſion of ſome one ſo employed for the preſervation of the ſaid ſhip, ſuch offen- der may be repelled by force; and if any perſon ſhall obſtruct the preſervation, or deface the mark of any goods ſaved from the ſaid ſhip, he ſhall within twenty days make double ſatis- faction to the party grieved, at the diſcretion of the two next juſtices, or in default be committed to hard labour for twelve months.—And if any goods that were ſtolen or carried off from any ſuch ſhip or veſſel in diſtreſs, ſhall be found upon any perſon ſhall not on demand deliver up the ſame to the owner, or to his order, he ſhall forfeit treble the value."

Made perpetual by 4 Geo. 1. c. 12. but reſtrained from abridging the juriſdiction of the Cinque ports.

† *Sect.* 2. And it is likewiſe enacted by par. 5. "That if any perſon or perſons ſhall make, or be aſſiſting in the making of any hole in the bottom, ſide, or any other part of any ſhip or veſſel ſo in diſtreſs as aforeſaid, or ſhall ſteal any pump belonging to any ſhip or veſſel ſo in diſtreſs as aforeſaid, or ſhall be aiding or abetting in the ſtealing ſuch "pump,

" pump, or ſhall wilfully do any thing tending to the inte
" ate loſs or deſtruction of ſuch ſhip or veſſel, ſuch offe
" ſhall ſuffer death without clergy."

† *Sect.* 3. It is alſo enacted by 26 Geo. 2. c. 19. " T
" if any perſon or perſons ſhall plunder, ſteal, take away,
" deſtroy any goods or merchandize, or other effects from or
" longing to any ſhip or veſſel which ſhall be in diſtreſs,
" which ſhall be wrecked, loſt, ſtranded, or caſt on ſhore
" any part of his majeſty's dominions, (whether any living cr
" ture (a) be on board any ſuch veſſel or not) or any of the
" niture, tackle, apparel, proviſion, or part of ſuch ſhip or
" ſel; or ſhall beat or wound with intent to kill or deſtroy,
" ſhall otherwiſe wilfully obſtruct the eſcape of any perſon
" deavouring to ſave his or her life from ſuch ſhip or veſſel,
" the wreck thereof; or if any perſon or perſons ſhall put
" any falſe light or lights, with intention to bring any ſhip
" veſſel into danger, ſuch offender ſhall ſuffer death with
" clergy.—Provided, that when goods or effects of ſmall va
" ſhall be ſtranded, loſt, or caſt on ſhore, and ſhall be ſtol
" without circumſtances of cruelty, outrage, or violence,
" offender may be indicted and puniſhed as for petit larce
" The proſecutions to be carried on at the expence of the coun
" by the clerk of the peace, on pain of forfeiting 100l. for
" fuſing or neglecting the ſame."

(a) Vide 3 Edw. 1. c. 4. 1 Comm. 290.

† *Sect.* 4. And it is further enacted by the ſaid ſtatu
par. 11. " That if any ſheriff, juſtice, mayor, magiſtrate,
" roner, and lord of a manor, commiſſioners of the land-ta
" conſtable, &c. or other perſon lawfully authoriſed, ſhall
" aſſaulted, beaten and wounded for, or on account of the
" erciſe of his or their duty, in or concerning the ſalvage or pr
" ſervation of any ſhip or veſſel in diſtreſs; or if any ſhip or v
" ſel, goods or effects, ſtranded, wrecked, or caſt on ſhore,
" lying under water in any of his majeſty's dominions, the
" fender on conviction at the gaol delivery, or at the general
" quarter ſeſſions, ſhall be tranſported for ſeven years."

† *Sect.* 5. And it is further enacted, par. 8. " That if
" fact be committed in Wales, then the proſecution ſhall
" may be carried on in the next adjoining Engliſh county."

At Salop ſummer aſſizes, 1774, Parry and Roberts were convicted upon this ſtatu for an offence committed in Angleſea. It was moved, in arreſt of judgment, upon laſt mentioned clauſe, that the trial was erroneous, becauſe Cheſhire, and not Sal was the next adjoining Engliſh county to Angleſea. To give the priſoners the benefit the objection, the fact was taken to be ſo; and the ſentence was reſpited. But all judges were of opinion that the conviction was proper; for Cheſter, properly ſpeaki is not an Engliſh county; and the words of the ſtatute, being merely a deſcription the law as it exiſted at the time, muſt be conſtrued according to the 26 Hen. 8. c. 6. which gives juriſdiction to the juſtices of gaol delivery, " in the *counties of England* adjoi

to the lordſhip or place in Wales where the offence is committed." It is true the 1. c. 19. ſ. 8. does not go on to ſay in the words of the 26 Hen. 8. "where ng's writ runneth." But the caſe of the King v. Athoe, reported in 8th Modern, has been the conſtant practice ever ſince to conſider Salop as the next adjoining county. M. S.

PPENDIX THE THIRD.

OFFENCES IN TAKING, KILLING, OR DESTROYING FISH.

T is enacted by 5 Eliz. c, 21. ſ. 2. "That whoever ſhall "break, cut down, cut out, or deſtroy any head or dam any ponds, pools, motes, ſtagnes, ſtews, or ſeveral pits erein fiſh are or ſhall happen to be put in or ſtored withal he owners or poſſeſſors thereof; or do or ſhall wrongfully in any of the ſaid ſeveral ponds, pools, motes, ſtews or , to the intent to deſtroy, kill, take, or ſteal away any the ſame fiſh, againſt the will of the owners, ſhall ſuffer ee months impriſonment, find ſecurity for his good beha- ur for ſeven years, and make compenſation to the party eved."

For the offence of treſpaſſing in ponds by endeavouring to take fiſh therein, vide 3 Edw. 1. c. 20. 2 Inſt. 200. vide alſo 31 Hen. 8. c. 2. where this offence was made felony.

Sect. 2. And it is alſo enacted by 4 and 5 Will. 3. c. 23. "That no perſon. except the owner or occupier of a hery, ſhall have or keep any net, angle, leap, piche, or er engine for the taking of fiſh, other than the makers and lers thereof for their better coveniency in the ſale of the e, and other than the owner and occupier of any river or hery for the time being;—and the owner of any river or hery, or his appointee, may ſeize, detain, and keep to his n uſe, all ſuch nets, or other engines which he ſhall find d or laid, or in the cuſtody of any perſon whatſoever, fiſh- g in any river or fiſhery whatſoever, without the conſent of e owner or occupier:—and any perſon being authoriſed by arrant under the hand and ſeal of a juſtice for the county or ace, may ſearch in the day time, the houſes of perſons pro- ibited to keep the ſame, who ſhall be ſuſpected of having e ſame, and the ſame and every or any of them to ſeize, tain and keep to his or their own uſe, or otherwiſe to cut in ieces or deſtroy, as things by this act prohibited to be kept perſons of their degree.—But this ſhall not extend to fiſher- en, &c. authoriſed to fiſh in navigable rivers or waters, with wful nets, &c."

Sect. 3. And it is alſo enacted by 22 & 23 Car. 2. c. ſ. 7. "That whoever ſhall uſe any caſting net, or other "net

On a conviction upon this act, LordMans-

field declared that the offence provivided againſt, is the ſtealing of fiſh; taking it without the leave or conſent of the owner. And the words *taking and killing* mean ſtealing. It muſt therefore appear that the fiſh killed were not fiſh of the party's killing them, and that they were not killed in his own ponds. 2. Burr. 682.

" net whatſoever, or any angle, hair nooſe, trail or ſpear
" ſhall lay any wears, pots, nets, fiſh-hooks, or other
" or ſhall take any fiſh by any means or device whatſoever
" any river, ſtew, pond, mote, or other ſeveral waters
" vers, or ſhall be aiding or aſſiſting thereunto, without
" conſent of the owner, on conviction by confeſſion, or the
" of one witneſs within a month, before one juſtice, ſhall
" compenſation, not exceeding treble damages, and over
" above, pay down immediately any ſum not exceeding
" ſhillings, to the uſe of the poor, and on default by diſ
" ſhall be impriſoned, not exceeding one month, in the
" of correction, unleſs the offender ſhall enter into a bond
" party injured, with one ſurety not exceeding ten pounds
" ver to offend in like manner.—Juſtices may ſeize the nets
" but the party may appeal to the quarter ſeſſions, which
" be final, unleſs title to any land, royalty, or fiſhery is
" cerned therein."

† *Sect.* 4. And it is alſo further enacted by the Black
9 Geo. 1. c. 22. " That whoever being armed with ſw
" fire arms, or other offenſive weapons, and having his or
" faces blacked, or being otherwiſe diſguiſed, ſhall unlaw
" ſteal or take away any fiſh out of any river or pond, or
" forcibly reſcue any perſon in lawful cuſtody for the ſam
" ſhall by gift or promiſe of money or other reward, pro
" any of the king's ſubjects to join him or them in any
" unlawful act, ſhall ſuffer death without clergy."

† *Sect.* 5. Alſo it is farther enacted by 5 Geo. 3. c.
" That whoever ſhall enter into any park or paddock fenc
" and incloſed, or into any garden, orchard, or yard, ad
" ing or belonging to any dwelling houſe, in or through w
" park or paddock, garden, orchard, or yard, any river
" ſtream of water ſhall run or be, or wherein ſhall be an
" ver, ſtream, pond, pool, moat, ſtew, or other water,
" by any ways, means, or device whatſoever, ſtall ſteal,
" kill, or deſtroy any fiſh bred, kept, or preſerved the
" without the conſent of the owner thereof; or ſhall be a
" or aſſiſting in committing the ſaid offence; or ſhall rece
" buy any ſuch fiſh knowingly, upon conviction by indict
" within ſix months, before the juſtices of gaol delivery w
" ſuch place ſhall be, ſhall be tranſported for ſeven y
" And any offender making a diſcovery of, and convictin
" accomplices, is intitled to a pardon."

† *Sect.* 6. And it is further enacted by the ſaid ſta
par. 3. " That whoever ſhall take, kill, or deſtroy, o
" tempt to take, kill or deſtroy, any fiſh in any river
" ſtream, pond, pool, or other water (not being in any
" or paddock, or in any garden, orchard, or yard, adjo

belonging to any dwelling houſe, but ſhall be in any other cloſed ground which ſhall be private property) on conviction by one witneſs, ſhall forfeit five pounds to the owner for every offence, or be committed to the houſe of correction not exceeding ſix months. Any one juſtice of the place, upon complaint on oath, may iſſue his warrant to bring the offender before him, and the owner may, at any time within ſix months, recover the penalty by action at law, &c. But by par. 5, nothing in this act ſhall extend to any perſon who ſhall have a juſt right or claim to take, kill, or carry away any ſuch fiſh as aforeſaid.

a conviction on the above clauſe, the court declared that it ought to appear that juſtice has juriſdiction; that the complaint was made by the owner: and that the was committed without his conſent. That it muſt alſo ſufficiently appear, upon oath, the river, &c. was private property, and who was the owner of it; that the proviſo the fifth ſection means to except ſuch perſons as have eſpecial right to fiſh in the fiſhery nother, and that if the owner is the complainer, it would be evidence of his diſſent. urr. 2282.

APPENDIX THE FOURTH.

OF OFFENCES BY INCENDIARIES.

THE CRIME of maliciouſly burning the houſe which another is in the poſſeſſion of, hath been already conſidered under the title ARSON (a); I ſhall therefore, in this chapter, ſtate what other offences, by MALICIOUS INCENDIARIES, are created felonies by ſtatute.

(a) Ante, page

Sect. 1. And firſt, to repreſs the daring outrages that formerly prevailed upon the Northern borders of the kingdom, it is amongſt other offences enacted by 43 Eliz. c. 13. ſ. 2. "That whoever ſhall wilfully and of malice, burn or cauſe to be burned, or aid, procure, or conſent to the burning of any barn or ſtack of corn, or grain within *Cumberland*, *Northumberland*, *Weſtmorland*, or *Durham*, ſhall, on conviction at the aſſizes, or general ſeſſion of the peace, ſuffer the pain of death without benefit of clergy."

Sect. 2. But theſe wicked courſes growing into frequent, ſecret practice in ſeveral parts of the kingdom, it is enacted 22 & 23 Car. 2. c. 7. "That if any perſon or perſons ſhall *in the night time*, maliciouſly, unlawfully and willingly burn, or cauſe to be burnt or deſtroyed, any ricks or ſtacks of corn, hay, or grain; barns, or other houſes or buildings, or kilns, the offenders ſhall ſuffer as in *caſes of felony*."

† *Sect.* 3. But this ſtatute having made the crimes then mentioned, only ſingle felonies, and ſome doubt (a) remaining whether the crime of Arſon was not intitled to the benefit of clergy, it was thought expedient to *extend* (b) the proviſions of the 22 & 23 Car. 2. c. 7. and it is accordingly enacted by 9 Geo. 1. c. 22. made perpetual by 31 Geo. 2. c. 42. "That if any perſon or perſons ſhall ſet fire to any (1) houſe, barn, or out-houſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; or ſhall forcibly reſcue any perſon being in lawful cuſtody for the ſame; or ſhall by gift, promiſe of money, or other reward procure another to join him or them in any ſuch unlawful act, every perſon ſo offending ſhall ſuffer death without clergy."—The perſon injured by this offence may ſue the hundred (2) to the amount of two hundred pounds, and a reward of fifty pounds is offered for apprehending, &c. the offender.

(a) Poulter's caſe, 11 Coke 29, and *dictum per* Gould. J. in the caſe of Rex v. Breeme, 4 Comm. 223.

(b) Vide 2 Black. 722.

(1) A priſon, the entrance to which is through a dwelling houſe, is fully within this act; Rex v. Donnevan. Black. 682.

2 Str. 1247.

(2) The words wilfully and maliciouſly, are not inſerted in the above clauſe of the Black act; and it hath therefore been adjudged, that they need not be laid in a declaration againſt the hundred; for a declaration may follow the ſtatute, however imperfectly expreſſed. But the court thought it probable that an indictment, for the felony itſelf muſt charge the offence to have been done wilfully and maliciouſly, for otherwiſe it is no crime. Black. 843.

Burning woods.

† *Sect.* 4. And to encourage and protect plantations of wood, It is enacted by 1 Geo. 1. ſt. 2. c. 48. ſ. 4. "That whoſoever maliciouſly ſet on fire, or burn, or cauſe to be burnt any wood, underwood, or coppice, or any part thereof, ſhall ſuffer and be liable to all the penalties and forfeitures as felons by the law now are."

Firing coal-mines.

† *Sect.* 5. It is alſo enacted by 10 Geo. 2. c. 32. ſ. 6. "That whoever during the continuance of the before-mentioned act of 9 Geo. 1. ſhall wilfully and maliciouſly ſet on fire, or cauſe to be ſet on fire, any mine, pit, or delph of coal, or cannel coal, ſhall ſuffer death without clergy."

Burning mills.

† *Sect.* 6. It is enacted by 9 Geo. 3. c. 29. ſ. 2. "That whoever ſhall wilfully or maliciouſly burn, or ſet fire to any wind-ſaw-mill, or other wind-mill, or any water-mill, or other mill, ſhall ſuffer death without benefit of clergy.—Provided the proſecution be commenced within eighteen months after the offence committed."

For the offence of throwing ſquibbs and fire-works, vide 10 & 11 Will. 3. c. 7. For burning garments with aqua fortis, &c. vide 6 Geo. 1. c. 23. App. 9. For burning private ſhips by officers and marines vide ch. 48. ſect. 10. For burning the public property, ſhips of war, magazines, ſtores, &c. vide ch. 12. ſ. 13, 14. For burning houſes by the negligence of ſervants, vide ante, c. 53. For the offence of threatning to burn houſes, barns, &c. vide 27 Geo. 2. c. 15. For burning and deſtroying engines to draw water out of mines, 9 Geo. 3. c. 29. ſ. 3. For burning wains, or carts loaded, vide 37 Hen. 8. c. 6. ſ. 4. For burning the covert for the red and black game, 4 & 5 Will. and Mar. c. 23. ſ. 11. For burning the covert for preſerving deer, vide 28 Geo. 2. c. 19. ſ. 3.

APPE

APPENDIX THE FIFTH.

Of SHOOTING at ANOTHER, AND SENDING THREATENING LETTERS.

IT is enacted by the Black act, 9 Geo. 1. c. 22. "That if "any perſon or perſons ſhall, wilfully and maliciouſly (1) ot at (2) any perſon in any dwelling houſe, or other ce; or ſhall forcibly reſcue any perſon in lawful cuſtody the ſaid offence; or ſhall by gift, or promiſe of money, other reward, procure any other to join with him or n in ſuch unlawful act, ſuch offenders ſhall be adjudged lty of felony, (3) and ſuffer death without the benefit of rgy."

Vide Arnold's caſe, 8 St. Tr. 290, for ſhooting at Lord Onſlow.

For the form of an indictment upon this act, Cro Cir. Com. 155.

It has alſo been *laid down*, by authority, that the word "maliciouſly" conſtitutes ential part of the offence, and that no act of ſhooting will amount to felony by this , unleſs, if death had enſued; ſuch homicide would have been murder. It fol- therefore, that neither an accidental ſhooting, which is neither wilful or malicious; ſhooting in the intemperance of paſſion, upon ſuch a provocation, as would, in reduce the crime of homicide to manſlaughter, in which no malice can exiſt; are n the meaning of this ſtatute. O. B. 1786, p. 748.

There muſt be a ſhooting *at* the perſon to conſtitute this felony. O. B. 1781. No. And the ſhooting muſt be with a gun, or other inſtrument, loaded with a leaden , &c.

It has alſo been *determined*, that this ſtatute creates a new felony, which conſe- ly poſſeſſes all the qualities incidental to a felony at common law. Therefore, if l perſons aſſociate in the purſuit of the ſame unlawful deſign, and only one of them , they are all equally involved in his guilt; for the act of one being conſidered as ct of all, whoever is preſent aiding and aſſiſting, are adjudged principals in the ſe- degree. The Coal heaver's caſe.—At the Lent Aſſizes for Surry, 1785, Gibſon, on, and Wiggs were tried upon two indictments, before Mr. Baron Perryn. The or burglary, the other upon this ſtatute, and they were found guilty. Garrow mov- arreſt of judgment, and the ſentence was reſpited. But the priſoners having been cted of the burglary, the judges never gave any opinion. In a caſe ſubſequent to however, where one only, among a number, had fired, and the evidence left it in t which it was; Mr. Juſtice Aſhhurſt directed the jury to conſider, Firſt, Whether ct of ſhooting *at* another had been committed; Secondly, Whether the priſoners were t aiding and aſſiſting; and on a reference, the judges were of opinion, upon the rity of the Coal heaver's caſe, which they recognized as good law, that the direction proper, and the conviction right. M. S.

Sect. 2. It is alſo enacted by the ſaid ſtatute, par. 14. hat every offence that ſhall be done or committed contrary this act, ſhall and may be enquired of, examined, tried d determined in any (4) county within England, in ſuch anner and form as if the fact had been therein committed. ut no attainder upon this act ſhall work corruption of blood,) loſs of dower, or forfeiture."

(4) It was determined by the judges, in the caſe of the King v. Rich Mortis, 11 Geo. 3. before Mr. Baron Eyre, that this clauſe gives to a te proſecutor the option of proceeding in any county; and that there is no neceſſity a ſpecial commiſſion. M. S.—(5) An eſtate came to a convict on this act, and, as ves corruption of blood, &c. a creditor was permitted to ſerve him with a latitat, in r to obtain a judgment for his debt. Lord Raym. 1572.

Threatening letter.

For the form of an indictment for this offence, vide Cro. Cir. Com. 153.

† *Sect.* 3. It is alſo enacted by the ſaid ſtatute 9 Geo. 1. c. 22. "That if any perſon or perſons ſhall knowingly ſend any letter, without any name ſubſcribed thereto; or ſigned with a fictitious name, demanding money, veniſon, or other valuable thing; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon for the offences aforeſaid; or ſhall by gift, or promiſe of money or other reward procure another to join him or them in any ſuch unlawful act; ſuch offender ſhall ſuffer death without benefit of clergy."

1 Burn. 293. O. B. 1785, p. 219. 1 Hale, 567.

† *Sect.* 4. And it is enacted by 27 Geo. 2. c. 15. "That if any perſon or perſons ſhall knowingly (6) ſend any letter without any name ſubſcribed thereto, or ſigned with a fictitious name or names, letter or letters, threatening to kill or murder any of his majeſty's ſubjects, or to burn their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw, that no money or veniſon, or other valuable thing ſhall be delivered, in or by ſuch letter or letters, or ſhall forcibly reſcue any perſon in lawful cuſtody for the ſame, ſuch offender ſhall ſuffer death without benefit of clergy."

(6) It has been determined, that proof of the priſoners merely delivering a letter of this kind, to another, without any intimation of what was contained in it, for the purpoſe of being conveyed to the proſecutor, is ſufficient evidence of his ſending it, *knowing the contents.*—And that the offence may be tried by a jury of the county in which the letter was delivered to the proſecutor, although the original delivery, for the purpoſe of conveyance to him, was in a different county. But it ſeems, that the threat contained in it, muſt be conceived in expreſs and unequivocal terms, and not drawn from it by inference or implication. Rex v. Girdwood, O. B. February ſeſſions, 1776, upon the unanimous opinion of all the judges. M. S. For the threat is the gift of the offence, Dec. 1784.

No certiorari will lie upon this act to remove an indictment from the juſtices of Middleſex. Cowper 24.

For the offence of ſending a threatening letter to a maſter wool-comber, &c. &c. vide Infra. appendix 10. ſ. 8.

† *Sect.* 5. And it is further enacted by 30 Geo. 2. c. "That all perſons who ſhall knowingly ſend or deliver any letter or writing, with or without a name or names ſubſcribed thereto, or ſigned with a fictitious name or names, or letters, threatening to accuſe any perſon of any crime puniſhable by the law with death, tranſportation, or pillory, or any other infamous puniſhment, with a view or intent to extort or gain money, goods, wares or merchandizes, from any perſon or perſons ſo threatened to be accuſed, ſhall on conviction be put in the pillory, publickly whipped, or fined, or impriſoned, or tranſported, not exceeding the ſpace of years, in the diſcretion of the court."

APPENDIX THE SIXTH.

OF OFFENCES BY SMUGGLERS.

SMUGGLING consists in bringing on shore, or in carrying from the shore, goods, wares, or merchandize, for which the duty has not been paid, or of goods of which the importation or exportation is prohibited. This offence is productive of various mischiefs to society. The public revenue is thereby injured; the fair trader is injured; and the nation impoverished, a rival and perhaps hostile states are thereby enriched; and the persons guilty thereof, being hardened by a course of disobedience to and defiance of law, behave so abandoned and daring as not to hesitate at being guilty of the greatest offences. It is therefore restrained by a great variety of statutes (a) which inflict pecuniary penalties, and seizure of the goods for clandestine smuggling; and affix the guilt of felony, with transportation for seven years, upon mere open daring and avowed practices. But the following statute is, for this purpose, *instar omnium*.

4 Comm. 155. 4 Bac. Abr. 523, 543. 1 Comm. 317. Beccar. c. 33. 8 Mod. 5.

(a) 5 Geo. 1. c. 11. 6 Geo. 1. c. 21. 9 Geo. 2. c. 35. 13 & 14 Car. 2. c. 11. 8 Geo. 1. c. 18.

Sect. 1. And it is accordingly enacted, by 19 Geo. 2. c. 34. "That if any persons, to the number of three or more, armed with fire-arms or other offensive weapons, (1) shall be assembled (2) in order to be aiding and assisting in the illegal exportation of wool or other goods prohibited to be exported, or the carrying of wool or other such goods in order to such exportation, or in the running, landing, or carrying away prohibited or uncustomed goods or goods liable to pay any duties which have not been paid or

A prisoner committed upon this act, for assisting in running goods is not within the 18 Geo. 2. c. 28. O. B. 1784, No. 759.

(1) The weapons must be such as are calculated for the purposes of offence; therefore, where one man had only a common horse-whip, although all the rest of the gang had fire arms, the Attorney General declined to argue the point, and the prisoner was discharged. Str. 1166. So also a hatchet has been thought no offensive weapon within the act, where it was only caught up upon the spurr of the occasion, and belonged to the prisoner in the way of his business. O. B. 1786. p. 857. So also a large stick, with three natural prongs and a large head, has been held no offensive weapon. O. B. 1785, p. 424. But it is impossible for the law to draw a precise line which will hold in all cases as to what shall, or shall not, be called an offensive weapon. It must greatly depend on the circumstances of the case; for it would be going a great deal too far to say that nothing but guns, pistols, daggers, and instruments of war should be considered as offensive weapons; bludgeons, clubs, and any thing not in common use; pokers, shovels, tongs, &c. and even a common walking stick, may be offensive weapons, according to the circumstances which accompany the use of them. It is therefore a question of fact for the jury, Whether the instrument was carried for the purpose of offence or not? O. B. 1785. p. 780.

(2) It has been laid down, that there must be a clear, premeditated assembling for the express purpose either of landing the goods, or doing the several acts mentioned in the statute; for it is not the intention of the act to include persons, who upon a sudden alarm, join in an attempt to seize. Vide O. B. 1784, p. 1071. O. B. 1786, p. 100. O. B. 1786, p. 970.

"secured;

O. B. 1785. No. 320.

" ſecured; or in the illegal relanding of any goods whatſoe
" which have been ſhipped or exported upon debenture or o
" tificate; or in reſcuing or taking away the ſame after ſeiz
" from any officer or officers of the cuſtoms or exciſe, or o
" his majeſty's revenue, or other perſon or perſons employed
" him or them, or aſſiſting him or them, or from the p
" where they ſhall be lodged by him or them; or in reſc
" any perſon who ſhall be apprehended for any of the offen
" made felony by this or any other act relating to the reve
" of cuſtoms or exciſe; or in preventing the apprehending
" any perſon who ſhall be guilty of any ſuch offence; or
" caſe any perſons to the number of three or more, ſo arm
" as aforeſaid, ſhall be ſo aiding or aſſiſting; or if any per
" ſhall have his face blacked, or wear any vizard, mark,
" other diſguiſe, when paſſing with ſuch goods, (3) or t
Vide Infra, 19 Geo. 3. c. 69. ſ. 10. by which the offence of obſtructing officers is made miſdemeanour only.
" forcibly hinder, obſtruct, aſſault, oppoſe or reſiſt any of
" officers of the cuſtoms or exciſe, or other his majeſty's re
" nue, in the ſeizing or ſecuring ſuch goods; or if
" perſon or perſons ſhall maim or dangerouſly wound any
" cer of the cuſtoms or exciſe, or any other his majeſty's re
" nue, in his attempting to go on board any ſhip or veſſel w
" in the limits of any of the ports of this kingdom; or ſh
" at, maim, or dangerouſly wound him when on board
O. B. 1784, p. 848, 857.
" ſhip or veſſel, and in the due execution of his office or du
" (4) then every perſon ſo offending ſhall be adjudged guilty
" felony, and ſuffer death without benefit of clergy."

(3) It has been ſaid, that this clauſe has no regard to the number of perſons, nor their being armed; and that an individual, with his face blacked, paſſing with goods, would, in all probability, be deemed within the act. And that the word being coupled with the preceding ſentence, ſeems alſo to be a clauſe which would re any individual who ſhall obſtruct. O. B. 1784. p. 1071.

(4) On an indictment on this ſtatute the proſecutor muſt give evidence that the offic acted as revenue officers, and that the goods were uncuſtomed; but circumſtantial pro is ſufficient. O. B. 1784, p. 1002. O. B. 1786, p. 100.

† *Sect.* 2. And it is further enacted by the ſaid ſtatute, p
The 26 Geo. 2. c. 32. 32 Geo. 2. c. 18. 4 Geo. 3. c. 12. which continue this preſent act of the 19 Geo. 2. c. 34. having created ſome doubt whether this ſurrender clauſe was not repealed, it is decla 19 Geo. 3. c. 69. to be in full force.
2. " That if any perſon or perſons ſhall be charged with
" ing guilty of any of the offences aforeſaid, before any one
" more of his majeſty's juſtices of the peace, or before one
" his majeſty's juſtices of the King's Bench, if the offence
" committed in England; or before the lord juſtice gener
" or one of the lords of juſticiary, or any one or more of
" majeſty's juſtices of the peace in Scotland, if the offence
" committed in Scotland; by information of one or more cre
" ble perſon or perſons, upon oath by him or them to be f
" ſcribed, ſuch juſtice of the peace, or juſtice of the Kin
" Bench, or lord juſtice general, lord juſtice clerk,
" lord of juſticiary reſpectively, before whom ſuch inf
" mation ſhall be made as aforeſaid, ſhall forthwith c
" tify under his hand and ſeal, and return ſuch inf
" mation to one of the principal ſecretaries of ſtate,

hereby required to lay the ſame as ſoon as conveniently may be before his majeſty in his privy council; whereupon it ſhall and may be lawful for his majeſty, his heirs or ſucceſſors, to make his or their order, in his or their ſaid privy council, thereby requiring and commanding ſuch offender or offenders to ſurrender him or themſelves within the ſpace of forty days, after the firſt publication thereof in the London Gazette, to the lord chief juſtice, or to any other of his majeſty's juſtices of the court of King's Bench, or to any one of his majeſty's juſtices of the peace, if the offence be committed in England; or to any of the lords juſticiary, or to any one of his majeſty's juſtices of the peace in Scotland, if the offence be committed in Scotland; who is hereby required upon ſuch offender or offenders ſurrendering him or themſelves, to commit him or them, without bail or main prize, to the county goal, or to the goal or priſon of the place where he or they ſhall ſo ſurrender, to the end that he or they may be forthcoming to anſwer the offence or offences wherewith he or they ſhall ſtand charged, according to due courſe of law, which order the clerks of his majeſty's privy council ſhall cauſe to be forthwith printed and publiſhed in the two ſucceſſive London Gazettes, and to be forthwith tranſmitted to the ſheriff of the county where the offence ſhall be committed, who ſhall within fourteen days after the receipt thereof, cauſe the ſame to be proclaimed, between the hours of ten in the morning, and two in the afternoon in the market-places upon the reſpective market-days, of two market-towns (a) in the ſame county, near (b) to the place where ſuch offence ſhall have been committed, and a true copy of ſuch order ſhall be affixed upon ſome public place in ſuch market-towns. And in caſe ſuch offender or offenders, ſhall not ſurrender him, or themſelves, purſuant to ſuch order of his majeſty, his heirs or ſucceſſors, to be made in council as aforeſaid, he, or they ſo neglecting or refuſing to ſurrender him, or themſelves as aforeſaid, or eſcaping after ſuch ſurrender, ſhall from the day appointed for his or their ſurrender as aforeſaid, be adjudged, deemed, and taken to be convicted and attainted of felony, and ſuffer death without clergy, if the offence be charged to have been committed in England; and of a capital crime, and ſuffer death and confiſcation of moveables, as in caſe of a perſon found guilty of a capital crime, and under ſentence for the ſame, if the offence be charged to have been committed in Scotland. And that it ſhall be lawful to and for the court of King's Bench, or the juſtices of oyer and terminer or general goal delivery, for the county or place where ſuch perſon ſhall be, to award execution againſt ſuch offender and offenders, in ſuch manner as if he or they had been convicted and attainted in the ſaid court of King's Bench, or before ſuch juſtices of "oyer

Vide the caſe of George Coſſans, who was arraigned upon a ſuggeſtion upon this clauſe, for not ſurrendering. O. B. 1785, No. 492. But, at a ſubſequent ſeſſions, the attorney general chuſing to try him on the indictment only, the court ordered a *noli proſequi* to be entered on the ſuggeſtion. O. B. 1785, No. 600.

(a) The market towns ſhould be ſet forth in the ſuggeſtion by name; for otherwiſe the priſoner can not give a particular anſwer to that part of the ſuggeſtion, nor come properly prepared with his proofs when the iſſues ſhall be tried. Foſter 56. For every law introducing a capital puniſhment, ought to be ſtrictly purſued 1 Wilſon 165.

(b) Vide Infra ſect. 9.

" oyer and terminer or general gaol delivery respectively,
" the offence be charged to have been committed in Englan
" and that it shall be lawful for the court of Justiciary, or
" lords of Justiciary in their circuits to award execution ag
" such offender or offenders in such manner as if he or they,
" been found guilty and condemned in the said court of Justi
" ary, or in the circuit respectively."

† *Sect.* 3. And it is further enacted by the said statu
par. 3. " That whoever shall after the time appointed as afor
" said, for the surrender of any person or persons so charg
" upon oath, with any of the offences aforesaid, shall be
" pired, harbour, receive, conceal, aid, abet, or succour
" person or persons, knowing him or them, to have been
" charged as aforesaid, and to have been required to surren
" him or themselves, by such order or orders as aforesaid,
" not to have surrendered pursuant to such order or orde
" being prosecuted for the same within one year after the offe
" committed, and lawfully convicted thereof, shall be guil
" of felony, and transported for seven years."

† *Sect.* 4. And it is further provided, " That nothing,
" shall hinder any judge, justice of the peace, magistrate or
" ficer, from taking such offender and proceeding against h
" by the ordinary course of law. The indictment or inform
Vide 19 Geo. 3. c. 69. " tion may be laid in any county in England, but no attain
" shall work corruption of blood."

† *Sect.* 5. The following constructions have been held up
this statute, First, That it is certainly necessary to suggest t
Foster 52, 1 Wilson 164. 4 Bac. Ab. 567. O. B. 1785. p. 646. p. 772. several facts and requisites in the act on the roll, in order
ground a prayer for execution; for they are the several fa
which the act requireth to be taken by the crown, in order
bring the prisoner under an attainder: And he may traver
them all, and the offender will not be affected, unless the seve
requisites mentioned in the act have been complied with in
particular case; and if he traverseth all or any of them, t
onus probandi lies upon the crown; for this is not like the case
an attainder by act of parliament, in which the facts are settle
the person named, and the only question is, Whether the p
soner is the identical person attainted.

† *Sect.* 6. Secondly, That if the prisoner would take adva
Foster 56. tage of the insufficiency of the suggestion, *viz.* because the nam
of the market-towns at which it is enacted the offender shall
proclaimed, is not set forth—he must demur. He cannot ta
advantage of it on motion.

Foster 56. † *Sect.* 7. Thirdly, That if the prisoner pleads, he must
it *instanter* and *ore tenus*, as is done in indictments; for the
can be no inconvenience in his pleading *instanter* if he inten

the proof of all the matters ſuggeſted on the roll upon the

Sect. 8. Fourthly, that the priſoner is not intitled to a co- Foſter 56.
the ſuggeſtion.

Sect. 9. Fifthly, That the words, "near to the place," ſtrictive of the ſheriff's power, and that the proclamation e made in the market towns near the place, and not at re- Foſter 57.
towns, nor at towns even comparatively remote, for though not mean at the very next market towns, it would be ve- gerous to leave matters of this ſort to the diſcretion of the merely.

Sect. 10. Sixthly, That the proceedings at the trial ſhall the ſame form and manner, as before juſtices of gaol de-

Sect. 11. It is enacted by 19 Geo. 3. c. 69. ſ. 10. "That Vide 11 Geo.
ever ſhall aſſault, reſiſt, oppoſe, moleſt, obſtruct, or hin- 2. c. 30. for
any officer or officers of the cuſtoms or exciſe in due ſeizing the penalty of
ſecuring any coffee, tea, cocoa nuts, chocolate, foreign obſtructing of-
dy, or other foreign ſpirituous liquors, or any other goods ficers and for
tſoever, which by any officer or officers of the cuſtoms of diſpenſing with
ſe ſhall or may be liable to be ſeized by virtue of, or in the production
ſuance of any act now in force; or ſhall by force or vio- of their deputa-
e reſcue, or ſhall cauſe to be reſcued, ony of the ſaid tion at the tri-
ds, after the ſame ſhall have been ſeized by ſuch officer al, &c.
fficers as aforeſaid, or ſhall attempt or endeavour ſo to
or after ſeizure ſhall cut, ſtave, break, or otherwiſe de-
y or damage any caſks, veſſels, boxes, or package, wherein
ſame ſhall reſpectively be contained; it ſhall and may be
ful to and for the officers of the cuſtoms or exciſe, and for
perſons acting in their aid or aſſiſtance to ſtop, arreſt, and
in, all and every the perſon and perſons ſo offending, and
her or them forthwith to carry before one or more juſtice
eace near to the place where the ſame ſhall be done, who
commit to the next county gaol till the next general quar-
ſeſſions there to be tried in the manner the act directs.

Sect. 12, It is alſo further enacted by 24 Geo. 3. ſt. 2. c. N. B. The of-
11. "That if any perſon or perſons upon the ſhore, or fender upon
board any ſhip, veſſel, or boat, ſhall maliciouſly ſhoot at, this act is alſo
upon any ſhip, veſſel, or boat belonging to his majeſty's na- ſubject to the
or in the ſervice of the cuſtoms or exciſe, within the li- ſurrender clauſe
s of any port, harbour, or creek of Great Britain, or with- before menti-
four leagues from any part of the eaſt thereof; or if any per- oned,
or perſons being on ſhore, or on board any ſhip, veſſel,
boat, ſhall maliciouſly ſhoot at, or maim, or dangerouſly
und any officer or officers of his majeſty's navy, or of the
cuſtoms

"cuſtoms or exciſe whether attempting to go on board, or
"on board, or returning from on board any ſhip, veſſ
"boat, or otherwiſe acting in the due execution of his or
"duty on ſhore, or within the limits of any port, harbour,
"creek of Great Britain, or within four leagues of any part
"the coaſt thereof,—or ſhall malicioufly ſhoot at, maim,
"dangerouſly wound any perſon or perſons, aiding and aſſi
"ſuch officer or officers in the execution of his or their
"as aforeſaid, then every perſon ſo offending, and all
"every perſon being aiding, abetting, or aſſiſting the
"ſhall be guilty of felony, and ſuffer death without clergy

If an offender againſt this ſtatute acts under the commands of his ſuperiors without privity, and from a juſt apprehenſion that his own life is endangered by diſobedience, it is a defence upon which he may be acquitted. O. B. 1786, No. 660.

APPENDIX THE SEVENTH.

OF OFFENCES IN BUYING AND RECEIVING STOLEN GOODS.

† FORASMUCH as thieves and robbers are much encouraged to commit offences, becauſe a great number of perſons make it their trade and buſineſs to deal in the buying ſtolen goods, it is enacted by 3 Will. & Mar. c. 9. ſ. 4. and 5 Ann. c. 31. ſ. 5. "That whoever ſhall buy or receive any goods or chattels, (1) that ſhall be feloniouſly taken or ſtolen by any other perſon, knowing the ſame to be ſtolen, ſhall be taken and deemed an acceſſary to ſuch felony after the fact, and ſhall incur the ſame puniſhment as an acceſſary to the fact after the felony committed." And by 4 Geo. 1. c. 11. perſons convicted of buying or receiving ſtolen goods, ſhall be tranſported for the term of fourteen years.

For the mode of proceeding againſt acceſſaries vide 1 Ann. ſt. 2. c. 9. 5. Ann. c. 31. 4 Geo. 1. c. 11, and 2 Hawk. c. 29 paſſim. Vide Foſter 73. and 273. O. B. 1758, No. 11, 12. O. B. 1758. No. 30, 31. O. B. Dec. 1783. Rex. v. Smith.

(1) A man was indicted for receiving goods and money; he was proved to have received the money, but the goods could not be traced into his hands; therefore, W. C. J. directed his acquittal. For the act is confined to the knowingly receiving of goods only, and it has been frequently explained, that money could not mean the goods or chattels of a perſon robbed. O. B. 1779. Vide Infra. But the ſtealing of Bank notes is made felony by 2 Geo. 2. c. 25, and the offender liable to ſuch puniſhment as if he had ſtolen *other goods*. Therefore, the knowing and felonious receivers of this ſpecies of property are liable to puniſhment like other offenders. Rex. v. E. Woods. Select Ty. 3 vol. p. 195. And in the caſe of the King and Tipping, 11 Geo. 3. it was determined by all the judges, that ſheep and rams are comprehended within the words "goods and chattels," mentioned in this act. M. S. But the bare receiving of ſtolen goods, knowing them to be ſtolen, makes not an acceſſary; for he may receive them to keep for the owner, or till they are recovered or reſtored by law. 1 Hale 620.

† *Sect.* 2. And it is alſo enacted by 29 Geo. 2. 30. "That
"every perſon who ſhall buy or receive any lead, iron, copper,
"braſs, bell-metal, or ſolder, knowing the ſame to be unlawfully come by; or ſhall privately buy or receive any
"lead, iron, copper, braſs, bell-metal, or ſolder, by ſuffering any door, window, or ſhutter to be left open or
"faſte

ened, between ſun-ſetting or ſun-riſing for that purpoſe; ſhall buy or receive the ſame or any of them, at any time, ny clandeſtine manner from any perſon or perſons whatſo-, although the principal felon or felons, has not, or have been convicted of ſtealing the ſame, ſhall, on conviction due courſe of law, be tranſported for fourteen years."

Sect. 3. And it is enacted by the ſaid ſtatute, par. 2. at any one juſtice upon complaint on oath, by any credible ſons, that there is cauſe to ſuſpect (a) ſtolen lead, iron, per, braſs, bell-metal, or ſolder, to be concealed in any elling-houſe, out houſe, yard, garden, or other place, warrant under his hand and ſeal, may cauſe the ſame to be rched in the day time, and if any of the articles ſo ſuſpected e ſtolen ſhall be found therein, the ſame together with the ſon in whoſe cuſtody it is found ſhall be brought before two juſtices of the county or place, and if the ſaid perſon ll not give an account of the ſame to the ſatisfaction of the ices, or ſhall not within ſome convenient time, to be ſet by ſaid juſtices, produce the party of, or from whom he ght or received ſuch ſtolen lead, &c. &c. he ſhall be adjudg- guilty of a miſdemeanor—forfeit for the firſt offence 40*s.* the ſecond 4*l.* and for every ſubſequent offence 6*l.*"

Juſtices on ſuſpicion may hear and determine.

(a) A bare ſurmiſe is not ſufficient. 4 Inſt. 177. 2 Hale 113, 150.

Sect. 4. And it is further enacted by par. 3. "That ry conſtable, headborough, or tithingman, in every place ere they ſhall be officers, and every beadle in his diſtrict, every watchman, during ſuch time only as he is on his du- ſhall apprehend every perſon who may reaſonably be ſuſ- ted of having, or carrying, after ſun-ſetting and before -riſing, any lead, iron, copper, braſs, bell-metal, or ſol- ſuſpected to be ſtolen, and carrying them before any two ices for the county or place, and if ſuch perſon do not pro- e the party from whom he bought or received the ſame, ſome other credible witneſs to depoſe upon oath, the ſale or livery of the ſaid lead, &c. or ſhall not give a ſatisfactory count how he came by the ſame, he ſhall be adjudged guil- of a miſdemeanor, and forfeit as aforeſaid."

Officers empowered to apprehend ſuſpected perſons.

Sect. 5. And it is further enacted, "That on conviction, two juſtices may order ſuch lead, copper, braſs, bell- tal, or ſolder, to be depoſited with the church-wardens overſeers of the place where it ſhall be found, or in any her convenient place, for any time not exceeding thirty ys, and to order the church-wardens and overſeers in ery pariſh within the bills of mortality, to advertiſe the me, and in every other pariſh to give notice by the public yer, and by fixing a deſcription of the ſame, and where

How the goods are to be diſpoſed of.

"depoſited,

" depoſited, on the church door, that the ſame may be cla
" by the owner, or ſome reputable perſon in his behalf.
" in caſe any perſon can prove their property in the ſame,
" on oath, to the ſatisfaction of any two juſtices for the cou
" place, they ſhall order reſtitution after payment of the ex
" ces, if not, the ſame ſhall be ſold at the end of the ſaid
" ty days, and after deducting the charges, one moiety
" be given to the perſon who ſhall apprehend the offender,
" the other to the poor of the pariſh where the offence is com
" ted, if it is known where, or otherwiſe where ſuch co
" ſhall be made."

Private perſons muſt apprehend ſuſpected offenders.

† *Sect.* 6. And it is further enacted by par. 3. "That
" ry perſon to whom any lead, iron, copper, braſs, bell-m
" or ſolder, ſhall be brought and offered to be ſold, pawne
" delivered, ſhall (there being reaſonable cauſe to ſuſpect
" ſame were unlawfully come by) apprehend, ſecure and
" before a juſtice of the county or place, where the ſame
" be ſo brought or offered, the perſon or perſons ſo bring
" offering the ſame, together with ſuch lead, iron, copper,
" bell-metal, or ſolder, and ſuch perſons ſo apprehended
" be dealt with, and ſuch articles ſhall be depoſited and diſ
" of, in the ſame manner as if the offender had been apprehe
" by the officers before-mentioned. And if it ſhall appear
" the oath of any perſon, notwithſtandiug he were concern
" ſtealing the ſame, if corroborated with other credible circ
" ſtances, to the ſatisfaction of two juſtices for the county or p
" where the ſame ſhall be ſo brought and offered, that there
" reaſonable cauſe to ſuſpect ſuch lead, &c. was unlaw
" come by, and that the perſon to whom the ſame was ſo bro
" and offered, did not (having it in his, her, or their power
" do) apprehend, ſecure, and carry before a juſtice as afore
" the perſon or perſons who ſo brought and offered the ſa
" that then the perſon to whom the ſame was offered, ſha
" deemed guilty of a miſdemeanor."

How the penalties ſhall be levied and applied.

† *Sect.* 7. And it is further enacted. "That all the
" forfeitures ſhall be levied by diſtreſs, by warrant under
" hands and ſeals of any two juſtices, before whom ſuch o
" der was deemed and adjudged guilty; one moiety to the
" former, the other to the poor. And on default, the
" juſtices ſhall commit the offender to the common gaol, or o
" priſon, or houſe of correction within their juriſdiction,
" one month for the firſt offence, two months for the ſecond,
" for every ſubſequent offence, until ſuch offender ſhall be
" charged by order of the court of general, or quarter
" ſions."

† *Sect.* 8. And it is further enacted by 2 Geo. 3. c.
" That whoever ſhall buy, or receive any part of the c

loading of, or any goods, ſtores, or things of, or belonging any ſhip or veſſel in the river Thames, knowing the ſame be ſtolen, or unlawfully come by, or ſhall privately buy receive any ſuch goods, ſtores, or things, or any part of ch cargo or loading, by ſuffering any door, window, or utter to be left open, or unfaſtened, between ſun-ſetting d ſun-riſing for that purpoſe, or ſhall buy or receive the me, or any of them, at any time, in any clandeſtine manner, om any perſon or perſons whomſoever, although the princi- l offender has not been convicted of ſtealing, or unlawfully rocuring the ſame, ſhall be tranſported for fourteen years." Buying ſtolen goods from veſſels in the river.

Sect. 9. And it is alſo enacted by 10 Geo. 3. c. 48. "That very perſon who ſhall buy, or receive any ſtolen jewel, or ewels, or any ſtolen gold or ſilver plate, watch or watches, nowing the ſame to have been ſtolen, ſhall, in all caſes where he ſaid goods ſhall have been feloniouſly ſtolen, accompanied vith a burglary actually committed in the ſtealing the ſame, r ſhall have been feloniouſly taken by a robbery on the high- vay, ſhall be triable as well before conviction of the principal elon, in ſuch felony and burglary, or robbery, whether he hall be in or out of cuſtody, as after his conviction, and being onvicted thereof, he ſhall be deemed guilty of felony, and e tranſported for the ſpace of fourteen years." Receiving jewels, &c.

† Sect. 10. And it is further enacted by 21 Geo. 3. c. 69. That every perſon who ſhall buy, or receive any pewter pot, or other veſſel, or any pewter in any form or ſhape whatever, knowing the ſame to be ſtolen, or unlawfully come by; or ſhall privately buy, or receive any ſtolen pewter, by ſuffering any door, window, or ſhutter to be left open or unfaſtened, between ſun-ſetting and ſun-riſing for that purpoſe; or ſhall buy or receive the ſame at any time, in any clandeſtine manner from any perſon or perſons whatſoever, although the principal felon, or felons has not, or have not been convicted of ſtealing the ſame, ſhall be tranſported for any time not exceeding ſeven years, or kept and detained in priſon, and therein kept to hard labour, for any time not exceeding three years, nor leſs than one year, and within that time (if the court ſhall think fitting) ſhall be once, or oftener, but not more than three times, publickly whipped." Pewter, tranſportation ſeven years.

† Sect. 11. And it is further enacted by 22 Geo. 3. c. 38.—"That in all caſes whatſoever, where any goods and chattels "(except lead, iron, copper, braſs, bell-metal, and ſolder) "ſhall have been feloniouſly taken and ſtolen, whether the "offence of the perſon or perſons, ſo taking or ſtealing the "ſame, ſhall amount to grand larceny, or ſome greater of- "fence Offenders may be tried for the miſdemeanor. Vide B. 2. c. 49.

Vide Rex. v. Wilkes and Forſgate.

" fence, or to petit larceny only (except where the perſo
" perſons actually committing the felony, ſhall have been a
" dy convicted of grand larceny, or of ſome greater offe
" every perſon who ſhall buy or receive any ſuch goods
" chattels, knowing the ſame to have been ſo taken or ſto
" ſhall be held and deemed guilty of, and may be proſecuted
" a miſdemeanor, and ſhall be puniſhed by fine, and impri
" ment, or whipping, as the court of Quarter Seſſions,
" are hereby empowered to try ſuch offender, or as any o
" court before which he, ſhe, or they ſhall be tried, ſhall th
" fit to inflict; although the principal felon, or felons (a)
" not before convicted of the ſaid felony, and whether he,
" or they is, or are amenable to juſtice or not. And in ca
" where the felony actually committed, ſhall amount to gr
" larceny, or to ſome greater offence, and where the perſo
" perſons actually committing ſuch felony, ſhall not be be
" convicted, ſuch offender or offenders, ſhall be exempt
" from being puniſhed as acceſſary or acceſſaries, if ſuch pri
" pal felon, or felons ſhall be afterwards convicted.

(a) Vide the caſe of William Haſlam, indicted for a miſdemeanour upon this act, where it was determined that the principal felon may even be admitted as an evidence againſt the receiver. O. B. 1786. p. 814.

† *Sect.* 12. And it is further enacted, " That it ſhall
" lawful for any one juſtice of the peace, upon complaint m
" before him upon oath, that there is reaſon to ſuſpect that th
" goods are knowingly concealed in any dwelling-houſe, o
" houſe, garden, yard, croft, or other place or places,
" warrant under his hand and ſeal, to cauſe every ſuch dwe
" ing, or place to be ſearched in the day time, and the per
" knowingly concealing the ſaid ſtolen goods, or any part the
" of, or in whoſe cuſtody the ſame, or any part thereof ſhall
" found, he, ſhe, or they being privy thereto, ſhall be dee
" ed guilty of a miſdemeanor, and ſhall be brought before
" juſtice of the peace for the county or place, and made ans
" able to anſwer the ſame, by like warrant of any ſuch juſti
" and on conviction ſhall he puniſhed as aforeſaid."

Juſtices on ſuſpicion may hear and puniſh.

† *Sect.* 13. And it is further enacted, " That every conſtab
" headborough, or tything-man, in every county or place, wh
" they ſhall be officers, and every beadle within his ward,
" diſtrict, and every watchman while on duty, ſhall and may
" prehend thoſe who may be ſuſpected of conveying, after-ſ
" ſetting, and before ſun-riſing, any goods or chattels ſuſpec
" to be ſtolen; and the ſame, together with ſuch perſon or p
" ſons, as ſoon as conveniently may be, to convey or carry
" fore any juſtice for the county or place, to be dealt with
" cording to law, and on conviction, they ſhall be held gui
" of a miſdemeanor, and impriſoned not exceeding ſix calend
" months, nor leſs than three calendar months."

Officers may apprehend.

. 14. It is alſo enacted by the ſaid ſtatute, "That every ſon to whom any goods or chattels which have been feloni- y ſtolen, or taken, ſhall be brought and offered to be ſold, ned, or delivered, ſhall on reaſonable cauſe for ſuſpicion, rehend, and carry before a juſtice for the county or place, re the ſame ſhall be ſo offered, the perſon and perſons ging, or offering the ſame."

For the pardon allowed to ſuch as ſhall diſcover receivers of ſtolen goods, vide ſecond book, tit. "pardon."

APPENDIX THE EIGHTH.

HE OFFENCES OF RETAKING, AND ADVERTISING A REWARD FOR, STOLEN GOODS.

T is enacted by 4 Geo. 1. c. 11. ſ. 4. "That wherever any "perſon taketh money, or reward, directly or indirectly, ler pretence, or upon account of helping any perſon or per- s to any ſtolen goods or chattels, every ſuch perſon ſo tak- money or reward, as aforeſaid, (unleſs ſuch perſon doth prehend, or cauſe to be apprehended, ſuch felon who ſtole ſame, and cauſe ſuch felon to be brought to his trial for the e, and give evidence againſt him) ſhall be guilty of felony, ſuffer the pains and penalties of felony, according to the ure of the felony committed in ſtealing ſuch goods, in ſuch the ſame manner as if ſuch offender had himſelf ſtole ſuch ds and chattels, in the manner, and with ſuch circum- nces, as the ſame were ſtolen."——And by 6 Geo. 1. c. 23. hoever ſhall proſecute an offender upon this ſtatute, to con- tion of felony, without benefit of clergy, ſhall be intitled to eward of forty pounds."

Poſt. c. 59. ſ. 5. 1 Hale 620. Upon thisclauſe the famous Jonathan Wild was convicted and executed, 10 Geo. 1.

Sect. 2. And it is further enacted by 25 Geo. 2. c. 36. perpetual by 28 Geo. 2. c. 19. ſ. 1. "That any perſon blickly advertiſing a reward, with no queſtions aſked, for return of things which have been ſtolen or loſt, or making of any words in ſuch publick advertiſement, purporting t ſuch reward ſhall be given, or paid, without ſeizing, or king enquiry after the perſon producing ſuch thing ſo ſtolen, loſt, or promiſing or offering in any ſuch publick advertiſe- nt, to return to any pawnbroker, or other perſon, who may ve bought or advanced money by way of loan upon ſuch thing ſtolen, or loſt, the money ſo paid or advanced, or any other n of money, or reward for the return of ſuch thing; and y perſon printing, or publiſhing ſuch advertiſement, ſhall ſpectively forfeit the ſum of fifty pounds for every ſuch of- nce, to any perſon who will ſue for the ſame."

Theftbote is an offence at common law, highly criminal, as being a ſort of compounding of felony, and puniſhable by fine and impriſonment. Vide 1 Hale 546. Poſt. c. 59. ſ. 7. B. 2. c. 29. ſ. 30.

For the reſtitution of ſtolen goods to the owner, vide index, "Reſtitution," and 4 Burn. 83.

APPEN-

APPENDIX THE NINTH.

OF OFFENCES BY MALICIOUSLY DESTROYI GARMENTS, HOP-BINDS, COAL-MINES, A MINE-ENGINES.

Garments.

† FIRST. It is enacted by 6 Geo. 1. c. 23. ſ. 11. "I "if any perſon or perſons, ſhall at any time or t "wilfully and maliciouſly aſſault any perſon or perſons in the "lick ſtreets, or highways, with an intent to tear, ſpoil, "burn, or deface, and ſhall tear, ſpoil, cut, burn or deface "garments, or cloaths of ſuch perſon or perſons, ſuch offen "ſhall be guilty af felony, and tranſported for ſeven years."

Hop-binds.

† *Sect.* 2. Secondly, It is enacted by 6 Geo. 2. c. 37. "That if any perſon or perſons, during the continuance of "9 Geo. 1. c. 22. (which is made perpetual by 31 Geo. "42.) ſhall unlawfully and maliciouſly cut any hop-binds gr "ing on poles, in any plantation of hops, every perſon or per "ſo offending, ſhall ſuffer death without benefit of clergy."

Coal-mines.

† *Sect.* 3. Thirdly, It is alſo enacted by 13 Geo. 2. c. "That if any perſon ſhall divert, or convey any water into "coal-work, with deſign to deſtroy, or damage the ſame, "ſhall pay to the party grieved, treble damages, with coſts

Mine-engines.

† *Sect.* 4. Fourthly, It is alſo enacted 9 Geo. 3. c. 29. "That if any perſon or perſons ſhall at any time wilfully or "liciouſly ſet fire to, burn, demoliſh, pull down, or other "deſtroy, or damage any fire-engine, or other engine for dr "ing water from collieries, or coal mines, or for drawing c "out of the ſame; or for draining water from any mine of l "tin, copper, or other mineral; or any bridge, waggon-w "or trunk, for conveying coals from any colliery, or coal-m "or ſtaith for depoſiting the ſame; or any bridge, or wag "way for conveying lead, tin, copper, or other mineral f "any ſuch mine, erected or to be erected, or any fence "fences, for dividing or incloſing any common ground, or w "land, ſet up, provided, or made in purſuance of any ac "parliament, ſuch offenders ſhall be tranſported for ſeven y "provided the proſecution be commenced within eighteen mo "after the offence committed."

APPENDIX THE TENTH.

OFFENCES IN DESTROYING LOOMS, &c. IN CERTAIN BRANCHES OF MANUFACTURE.

Master woolcomber.

Vide 3 Hen. 6. c. 1.

Vide 29 Geo. 2. c. 33.

30 Geo. 2. c. 12.

IT is enacted by 12 Geo. 1. c. 34. ſ. 6. "That whoever "ſhall aſſault or abuſe any maſter wool-comber or maſter "weaver, or other perſon concerned in any of the woollen ma-"nufactures of this kingdom, whereby any ſuch maſter or other "perſon ſhall receive any bodily hurt for not complying with, "or not conforming, or not ſubmitting to any ſuch illegal by-"laws, ordinances, rules or orders *as are mentioned in the act*; "whoever ſhall write, or cauſe to be written, or knowingly "ſend, or cauſe to be ſent, any letter or other writing or "meſſage, threatning any hurt or harm to any ſuch maſter "wool-comber or maſter weaver, or other perſon concerned in "the woollen manufacture; or threatning to burn, pull down, "or deſtroy any of their houſes or out-houſes, or to cut down "or deſtroy any of their trees, or to maim or kill any of their "cattle for not complying with any demands, claims, preten-"ces of any of his or their workmen, or others employed by "them in the ſaid manufacture, or for not conforming or not "ſubmitting to any ſuch illegal bye-laws, &c. as aforeſaid, "ſhall, on conviction, upon *any* indictment, to be found within "twelve calendar months after the offence committed, be tranſ-"ported for ſeven years."

Journeymen.

"And by 22 Geo. 2. c. 27. the above clauſe is extended to "journeymen dyers, journeymen hot-preſſers, and all other per-"ſons employed in or about any of the woollen-manufactures; "or in the making of felts or hats; or in the manufactures of "ſilk, mohair, furr, hemp, flax, linnen, cotton, fuſtian, iron, "or leather; or in or about any manufactures made up of wool, "furr, hemp, flax, cotton, mohair, or ſilk, or of any of the "ſaid materials mixed one with another. But by 13 Geo. 1. c. "23. ſ. 17. all proſecutions ſhall be within three months after "the offence committed."

Linen yarn.

Sect. 2. It is alſo enacted, by 4 Geo. 3. c. 37. ſ. 16. That whoever ſhall break into any houſe, ſhop, cellar, vault or other place or building, or by force enter into any houſe, ſhop, cellar, vault, or other place or building, with intent to ſteal, cut or deſtroy any linnen yarn, or any linnen cloth, or any manufacture of linnen-yarn, belonging to *any* manufacturer, or the looms, tools, or implements uſed therein; or ſhall wilfully or maliciouſly cut in pieces or deſtroy any ſuch goods, either when expoſed to bleach

" or dry, ſhall ſuffer as in caſes of felony without benefit of c
" gy. But this act ſhall not extend to Scotland or Ireland."

Woollen goods

† *Sect.* 3. And it is enacted by 22 Geo. 3. c. 40. "
" whoever ſhall by day or by night, break into any hou
" ſhop, or enter by force into any houſe or ſhop, with inte
" cut or deſtroy any ſerge, or other woollen goods in the
" or any tools employed in making thereof; or ſhall wilfully
" maliciouſly cut or deſtroy any ſuch ſerges, or woollen g
" in the loom, or on the rack; or ſhall burn, cut, or de
" any rack on which any ſuch ſerges, or other woollen
" are hanged in order to dry, or ſhall wilfully and malici
" break, or deſtroy any tools uſed in the making any ſuch ſe
" or other woollen goods, not having the conſent of the o
" ſo to do, ſhall be guilty of felony without benefit of clergy

Silk goods.

† *Sect.* 4. And it is further enacted by the ſaid ſtatute
2. " That whoever, by day or by night, ſhall break into
" houſe or ſhop, or enter by force into any houſe or ſhop,
" intent to cut or deſtroy any velvet, wrought ſilk, ſilk m
" with any other materials, or other ſilk manufacture, in
" loom, or any warp, or ſhute, tools, tackle, or utenſils
" ſhall wilfully or maliciouſly cut or deſtroy any velvet, wro
" ſilk, or ſilk mixed with any other materials, or other ſilk
" nufacture in the loom, or any warp or ſhute, tools, ta
" or utenſils prepared or employed, in, or for the making th
" of; or ſhall wilfully and maliciouſly break or deſtroy
" tools tackle, or utenſils, uſed in, or for the weaving or m
" ing of any ſuch velvet, wrought ſilks, or ſilks mixed
" other materials, or other ſilk goods, or ſilk manufacture,
" having the conſent of the owner ſo to do, ſhall be guilty o
" lony, without benefit of clergy."

Linnen and cotton goods.

† *Sect.* 5. And it is further enacted by the ſaid ſtatute
3. " That whoever, by day or by night, ſhall break into
" houſe or ſhop, or enter by force into any houſe or
" with intent to cut and deſtroy any linnen or cotton, or li
" and cotton mixed with any other materials, or other li
" or cotton manufactures, in the loom; or any warp or
" tools, tackle, and utenſils; or ſhall wilfully and ma
" ouſly cut, or deſtroy any linnen or cotton, or linnen or
" ton mixed with any other materials, or other linnen
" cotton manufactures in the loom, or any warp or
" tools, tackle, and utenſils prepared for, or employed i
" making thereof, or ſhall wilfully and maliciouſly break
" deſtroy any tools, tackle, and utenſils, uſed in and fo
" carding, ſpinning, weaving, preparing, or making in

ay whatever, any ſuch linnen or cotton, or linnen or cotn mixed with any other materials, or other linnen and cotton oods, or linnen and cotton manufactures whatſoever, not ving the conſent of the owner ſo to do, ſhall be guilty of lony without benefit of clergy."

Vide 1 Black. 364. how far Scotch manufacture is the manufacture of England.

PPENDIX THE ELEVENTH.

OFFENCES IN NOT PERFORMING QUARANTINE.

T is enacted by 26 Geo. 2. c. 26. "That all ſhips and "veſſels arriving, and all perſons, goods, and merchanzes coming or imported from any place from whence the ivy council ſhall judge it probable that the infection may be ought, ſhall be obliged to make their quarantine in ſuch ace, for ſuch time and in ſuch manner as ſhall be directed the king's order in council, ratified by proclamation, or bliſhed in the *Gazette*, and that during ſuch appointed pe-od, no perſon, goods, or merchandizes, ſhall come, or be ought on ſhore, or go, or be put on board any other ſhip, veſſel, without permiſſion, and under ſuch regulations, as all be ordered by the king and council, as aforeſaid."

Vide 1 Jac. c. 31. 7 Geo. 1. c. 3. 8 Geo. 1. c. 8. continued by 21 Geo. 3. c. 29. ſ. 6. 1 Geo. 2. c. 13. 6 Geo. c. 34. 26 Geo. 2. c. 6. 28 Geo. 2. c. 6. for other proviſions reſpecting quarantine, vide 33 Geo. 2. c. 16.

Sect. 2. And it is further enacted by par. 2. "That if e plague ſhall appear on board any ſhip, being to the northard of Cape Finiſterre, the commander ſhall immediately roceed, by 29 Geo. 2. c. 8. to the harbour of St. Helens ool, or to ſuch other place as the privy council ſhall apoint, and from thence cauſe intelligence of the condition of s ſhip to be given to the ſecretary of ſtate. But if he ſhall t be able to make Scilly, or is forced to go up either of the hannels, he ſhall not preſume to enter with ſuch ſhip into y port, but ſhall remain in ſome open road, avoiding all tercourſe whatever, with other ſhips, until the king's plearе be known, on pain of being adjudged guilty of felony ithout benefit of clergy."

Sect. 3. And it is further enacted par. 3. "That whener any country is infected with the plague, or the privy ouncil ſhall as aforeſaid, have made any order for perform-g of *quarantine*, the officer appointed for the purpoſe, ſhall a convenient diſtance, as often as any ſhip or veſſel, ſhall ttempt to enter any port or place, demand of the commanr every particular (as ſpecified in the act) concerning e ſame, and in caſe it ſhall appear that any perſon then on oard ſuch ſhip or veſſel, ſhall at the time of ſuch examination

" be actually infected with the plague, or that ſuch ſh
" obliged to perform quarantine, having come from any
" viſited with the plague, any of the king's ſhips, &c. m
" force and violence oblige her to repair to the place appo
" for performing quarantine. And in caſe the commander
" ſuch ſhip or veſſel, conceal the ſame, he ſhall ſuffer d
" without clergy. And in caſe ſuch commander do not m
" true diſcovery in any other of the particulars directed by
" act, he ſhall forfeit 200l. and if he do not repair to the
" appointed, 500l. And any perſons who attempt to qu
" veſſel, ſhall be obliged to return, ſuffer impriſonment
" ſix months, and forfeit 200l."

† *Sect.* 4. And by par. 8. " If any perſon obliged to
" form quarantine, as aforeſaid, ſhall wilfully refuſe or ne
" to repair, within convenient time, after notice, to the ho
" lazaret, or other place, (as directed by the act to be provi
" or having been placed therein, ſhall eſcape, or attempt to e
" out of the ſame before *quarantine* fully performed, it ſha
" lawful for the officer appointed, by force, to compel his re
" and every perſon ſo refuſing, or neglecting, to repair
" ſuch notice as aforeſaid, into ſuch houſe, lazaret, or o
" place; and alſo every perſon actually eſcaping as afore
" ſhall ſuffer death without clergy."

† *Sect.* 5. And it is further enacted by the ſaid ſtatute,
10. " That if any perſon not infected with the plague,
" liable to perform quarantine, ſhall enter any houſe, laz
" or other place, appointed as the act directs, whilſt any pe
" or perſons infected with the plague, or being under qua
" rine ſhall be therein, and ſhall return, or attempt to re
" from thence without permiſſion, by order of privy cou
" the officer may compel him to return. And in caſe ſuch
" ſon ſhall actually eſcape out of ſuch houſe, lazaret, or p
" appointed as the act directs, before the full performanc
" quarantine, he ſhall ſuffer death without clergy. If the o
" neglects his duty, he ſhall forfeit 100l. and if he embe
" any goods, he ſhall pay treble damages."

† *Sect.* 6. And it is further enacted par. 18. " That if
" perſon or perſons, ſhall knowingly, or wilfully, conceal
" the officers of *quarantine*, or ſhall clandeſtinely convey
" letters, goods, wares, or merchandizes from any ſhip u
" *quarantine*, or liable to perform quarantine as aforeſaid
" from any lazaret, or other place where goods ſhall be
" forming *quarantine*, every ſuch offender ſhall ſuffer d
" without clergy."

APPE

APPENDIX THE TWELFTH.

HINDERING THE EXPORTATION OF CORN.

To assault with intent to hinder a misdemeanour.

T is enacted by 11 Geo. 2. c. 22. "That whoever shall "wilfully and maliciously beat, wound, or use any other lence to or upon any person or persons, with intent to deter hinder him or them from buying of any corn or grain in any rket or other place within this kingdom; or shall unlawfully or seize upon any waggon, cart, or other carriage, or se loaded with wheat, flour, meal, malt, or other grain, or on the way to or from any city, market-town, or sea port this kingdom, and wilfully and maliciously break, cut, se- rate, or destroy the same, or any part thereof, or the harness the horses drawing the same; or shall unlawfully take off, ve away, kill, or wound any such horses, or unlawfully or wound the driver or drivers of such waggon, cart, or er carriage, or horse so loaded, in order to stop the same; shall, by cutting of the sacks, or otherwise, scatter or throw road such wheat, flour, meal, malt, or other grain, or shall e, or carry away, spoil, or damage the same or any part reof; on conviction by two justices of the peace, or at ions, shall be sent to the common gaol, or house of cor- tion, to hard labour, not exceeding three months, nor less n one, and be once publickly whipped during the said con- nement."

A second offence, or to destroy any granary, &c. felony.

Sect. 2. And it is further enacted, par. 2. "That if any ch person or persons so convicted shall commit any of the ences aforesaid a second time, or if any person or persons ll wilfully and maliciously pull, throw down, or otherwise stroy any store-house or granary, or other place where corn ll be then kept, in order to be exported; or shall unlaw- ly enter any such store-house, granary, or other place, and e and carry away any corn, flour, meal, or grain therefrom, shall throw abroad or spoil the same, or any part thereof; shall unlawfully enter on board any ship, barge, boat, or ssel, and shall wilfully and maliciously take and carry away, ft, or throw out therefrom, or otherwise spoil or damage y meal, flour, wheat, or grain therein, intended for expor- tion, every person so offending, shall, on conviction, be nsported for seven years; and if such convict shall return, c. he shall suffer death as a felon, without benefit of clergy; t without corruption of blood, loss of dower, or disinheri- nce."

Sect.

The hundred liable.

† *Sect.* 3. And it is further enacted, "that the hund
"where any such offence shall be committed, shall make
"satisfaction and amends, not exceeding one hundred po
"to any party injured, or their representatives, for the dam
"they sustain by any offender against this act, to be recovere
"directed by the statute of hue and cry, 27 Eliz. c. 13. Bu
"party shall give notice to a constable within two days after
"fact; and before the expiration of ten days after such no
"shall give in his examination as the act directs; and if any
"of the offenders be convicted within twelve months, the
"dred is released. No actions, therefore, shall be brought
"fore the expiration of one year, nor after the expiration of
"years."

APPENDIX THE THIRTEENTH

OF THE OFFENCE OF RETURNING FROM TRANSPORTATION.

Transportation to America.

† ALL offenders convicted of grand or petit larceny, or other felonious taking, except the buying or recei of stolen goods, whose crimes are *within* the benefit of cle and for which they are liable only to be burned in the hand whipped; and also all offenders whose crimes, on convic exclude them from the benefit of clergy, to whom his ma shall extend his royal mercy, on condition of *such* transp tion, (1) signified under the great seal, by one of the princ secretaries of state, shall, and may be transported to America for seven years; and all offenders convicted of knowingly ing or receiving stolen goods, to whom such conditional m shall be extended, generally shall be transported to Ame for the term of fourteen years, or such other term as sha made part of such condition. And it is thereupon fur enacted, by 4 Geo. 1. c. 11. s. 2. "That if any offende "offenders so ordered to be transported for any term of "years or fourteen years, or other time or times as a "said, shall return into any part of Great Britain or Ire "before the end of his or their said term, he or she so re "ing as aforesaid, shall be liable to be punished as any p "attainted of felony without the benefit of clergy, and "cution shall and may be awarded against such offende

(1) If the condition of the king's pardon shall be, that he departs the realm within fourteen days from the day of his discharge from prison, it has been ruled that the daily book which is kept by the clerk of the papers for the prison in which the discharges and commitments are entered, is admissable evidence to prove the time and fact of the discharge, altho the duty of another officer to discharge the prisoners, and the clerk of the papers h personal knowledge of the fact. O. B. 1785, p. 1137, 1138.

(2) And it has been determined by all the judges, upon a question arising on the f act, referred by Mr. Justice Bathurst, that when an act of parliament says generall an offender shall be transported, without saying where, it shall be to America. 1785, p. 1142.

"offe

enders accordingly," Provided nevertheleſs, "That the g may at any time pardon, and diſpenſe with any ſuch nſportation, and allow of the return of any ſuch offender offenders from America, upon the terms as deſcribed in the ."

Sect. 2. And whereas ſome felons ordered for tranſporta- have already, and others may, come on ſhore, and re- to Great Britain before they have been actually tranſported merica, or may break gaol, or eſcape before ſuch tran- ation. It is thereupon enacted, by 6 Geo. 1. c. 23. ſ. 6. hat if any felon or felons who ſhall be ordered for tranſporta- tion, ſhall be afterwards at large within Great Britain, with- t ſome lawful cauſe, before the expiration of the term for hich ſuch felon or felons was, were, or ſhall be ordered to be nſported, all and every ſuch perſon and perſons, being ereof lawfully convicted, (3) ſhall ſuffer death as in caſes felony, without benefit of clergy."

(3) If the priſoner, upon his trial, confeſs the fact, and acwledge he is the man, the court will record his confeſſion. O. B. 1784, p, 56. But rwiſe, the record of his conviction muſt be produced; it muſt correſpond with the ments in the indictment, and evidence muſt be given of his identity. O. B. 1785, p. 7.

† *Sect.* 3. And to the intent that ſuch conviction may be as e trouble as poſſible, It is further enacted by par. 7. "That uch offender may be tried either before Juſtices of aſſize, oy- r and terminer, or goal delivery for the county, city, or lace from whence he was ordered to be tranſported; and hat the clerk of the aſſize and the clerk of the peace where uch orders for tranſportation ſhall be made, ſhall, at the equeſt of the proſecutor, or any other in his majeſty's be- alf, certify a tranſcript, briefly and in few words, contain- ng the effect and tenor of every indictment and conviction of uch man or woman, and of the order or contract for his or er tranſportation, to the juſtices of aſſize, oyer and terminer, r gaol delivery where ſuch man or woman ſhall be indicted; which ſhall, on production of it, be a ſufficient proof of the former conviction and order for tranſportation."

Mode of trial,

† *Sect.* 4. And whereas many felons who have agreed, upon rtain conditions, to tranſport themſelves, either for life, or r ſome term or number of years, have already, and may reafter come on ſhore or return, It is enacted, by 16 Geo. 2. 15. "That if any felon or other offender already ordered, or hereafter to be ordered for tranſportation, or who hath already, or hereafter ſhall agree to tranſport him or her- ſelf, on certain conditions, to America, either for life or any number of years, ſhall be afterwards at large, with- in any part of Great Britain, without ſome lawful cauſe,

Convicts tranſporting themſelves, &c.

"before

" before the expiration of the term for which he or she was
" ſo ordered to be tranſported, or had ſo agreed to tranſport
" him or herſelf; all and every ſuch perſon or perſons being
" thereof lawfully convicted, ſhall ſuffer death without benefit
" of clergy."

† *Sect.* 5. Whereas offenders excluded from the benefit of clergy are frequently reprieved by the judge who tries them, and upon his recommendation, may receive mercy on condition of tranſportation to America for life or for the term of fourteen years; it is enacted by 8 Geo. 3. c. 15. "That where upon ſuch recommendation, ſuch offenders ſhall receive mercy as aforeſaid, ſignified by a principal ſecretary of ſtate, to the judge ſo recommending, it ſhall be lawful for every ſuch judge to make an order for the immediate tranſportation of every ſuch offender, which ſhall be as good and effectual, and be considered as if the ſame had been made during the continuance of the aſſizes at which ſuch offender was, or ſhall be convicted.
" But if ſuch offender ſo ordered for tranſportation ſhall be at
" terwards at large, within any part of Great Britain, without
" ſome lawful cauſe, (4) before the expiration of the term for
" which ſuch offender ſhall have been ordered to be tranſported,
" every ſuch perſon being thereof lawfully convicted, ſhall
" ſuffer death without benefit of clergy, and ſhall be tried in
" like manner as *other felons* found at large before the expiration
" of their term."

(4) Maximilian Miller was convicted at O. B. January ſeſſions, 1771, and ordered tranſportation for ſeven years. He obtained mercy, under the ſign manual, on condition of his giving ſecurity to the ſatisfaction of the Recorder to tranſport himſelf for the term. He gave the ſecurity, and was accordingly admitted to bail, but did not go abroad. In December ſeſſions following he was indicted capitally for being at large, &c. He offered the ſign manual in evidence, but that being rejected, he was found guilty, ſubject to the opinion of the judges, Firſt, Whether the ſign manual ought to have been received? Secondly, Whether it could have availed the priſoner, as he had not *ſubſtantially* performed the conditions of his pardon? All the judges, except De Grey, C. J. were unanimous that the evidence ought to have been received; and that the priſoner having complied with the literal import of the condition, by giving the ſecurity, which authorized the judge to bail him, it was a *good cauſe* for him to appear at large, and therefore could not to have been convicted. Black. 797. It is ſaid however, that no judicial determination was ever communicated upon this caſe, but that the priſoner was, in fact, remanded to his former ſentence. O. B. 1785, p. 1140, 1145. And this appears to be the practice, vide Patrick Madan's caſe. And the caſe of Aikles, O. B. 1785, No. 902.

Tranſportation beyond the ſeas.

† *Sect.* 6. But America having at length ſeparated from connection with Great Britain, The puniſhment of felons and other offenders by tranſportation to the plantations, was attended with many difficulties. And it is therefore enacted by 19 Geo. 3. c. 74. " That when any perſon in Great
" land, or Wales, ſhall be lawfully convicted of grand or petit
" larceny, or any other crime for which he is liable to be
" tranſported to America, ſuch perſon ſhall, if the court ſhall
" think fit, be ordered to be tranſported to any parts beyond
" the ſeas, whether the ſame be ſituated in America, or elſe-
" where, in ſuch and the like manner, and for the ſame term
" as, and for which ſuch perſon is, or ſhall be liable to be tranſ-
" ported to America."

Continued to the 1ſt of June 1787, by 24 Geo. 3. c. 56.

Barrington on the ſtatutes, p. 445, to 447.

Sect. 7. And it is further enacted by the ſaid ſtatute, par. That when any ſuch perſon, who ſhall be ſo convicted, all, in conſequence thereof, be ordered to be tranſported to y parts beyond the ſeas. Or if his majeſty ſhall extend his ercy to any offender, convicted or attainted of any felony exded from clergy, upon condition of (a) tranſportation to any rts beyond the ſeas, as aforeſaid, then in any ſuch caſes all ws, ſtatutes, uſages, and cuſtoms now in force, with regard tranſportation to America, and their puniſhment for being erward at large, within any part of Great Britain, before e expiration of the ſeveral terms for which they were ordered be tranſported, or had agreed to tranſport themſelves, and rticularly the ſeveral proviſions contained in the 4 Geo. 1. c. . 6 Geo. 1. c. 23. 16 Geo. 2. c. 15. and the 8 Geo. 3. 15. ſhall take place and be in force and enure, with regard the tranſportation of ſuch offenders, and with regard to their niſhment for being afterwards at large as aforeſaid, in like anner as if the ſame had been repeated, and ſpecially inſert- in this act." (5)

(a) For the form in which conditional pardons are now worded, vide B. 2. c. 37.

) Aikles was convicted, O. B. January ſeſſions, 1784, of felony *within the benefit of* , and received ſentence of tranſportation, according to the direction of this act, for years. He received his majeſty's pardon "on condition of departing the realm with- ourteen days after his "diſcharge, giving ſecurity to the ſatisfaction of the Recorder ſo ." He gave the ſecurity required; and in conſequence thereof was diſcharged out ewgate on the 9th of March, 1785, by virtue of a warrant under the hand and ſeal of Recorder. On the 26th of May following, he was apprehended, and afterwards in- d for being at large in Great Britain before the expiration of the term, without any ful cauſe, &c. Upon theſe facts being proved, ſeveral queſtions of law aroſe.—The Geo. 2. c. 15, inflicts death upon the return of any felon "who ſhall have agreed to ranſport himſelf *to America*." Aikles had only agreed to tranſport himſelf *beyond the* —The 19 Geo. 3. c. 74, inflicts death upon the return of any offender convicted of any e for which he was liable, by the former acts, to be tranſported to America, "who all, *in conſequence thereof*, be ordered to be tranſported to parts beyond the ſeas." Aikles *not been tranſported* beyond the ſeas *in conſequence* of a conviction which rendered him le to be tranſported to America: He had agreed to tranſport himſelf *in conſequence of* king's pardon, &c; a caſe for which the act has made no expreſs proviſion. The 19 . 3. c. 74. inflicts death upon the return of any offender, "convicted of felony, *exclud- rom clergy*, to whom his majeſty ſhall extend mercy on condition "of tranſportation." Aikles had received conditional mercy, on conviction of an offence *within the benefit lergy*. It was therefore contended that the priſoner was not, *immediately*, within the ration of theſe ſtatutes. But Aikles had broken the condition of the king's pardon, in departing the realm within fourteen days from his diſcharge; and upon the argument this caſe, it ſeems to be the opinion, that the whole grant was, in conſequence of the ation, a mere nullity and entirely done away. This conſideration gave birth to the ſtions whether the priſoner was not then a perſon within theſe words of 19 Geo. 3. awfully convicted of a crime for which he is *liable* to be tranſported to America, and who, in conſequence thereof, *had been ordered to be tranſported* beyond the ſeas." But it contended, upon the authority of Miller's caſe before mentioned, that, having com- d with a part of the condition, by giving ſecurity, which, though otherwiſe expreſſed, ſt neceſſarily be precedent; the legal diſcharge obtained in conſequence of it, by virtue the Recorder's warrant, formed a *lawful cauſe for being at large*, which was not in- upted by the violation of the further condition, "that he ſhould depart the realm with- fourteen days, &c." Theſe ſeveral queſtions furniſhed ingenuity with argument, and duced the ſentiments of judges, highly reſpectable indeed, upon points of criminal law; this queſtion never came to an ultimate deciſion. It appeared upon further evidence, the priſoner had a real intention to quit the kingdom, which had been defeated by un- ected poverty, diſtreſs, and ill health. The jury, under the direction of the court, thought eſe circumſtances amounted to *a legal excuſe*, and the priſoner was accordingly acquitted, remanded to his former ſentence, O. B. 1785, No. 901.

Sect.

Labour on board the hulks.

† *Sect.* 8. It is alſo enacted by par. 27. "That male of
"fenders, convicted of any crime, except petit larceny, f
"which they are liable to tranſportation, may in lieu there
"if the court ſhall think fit, be puniſhed by being kept
"board ſhips or veſſels, (commonly called the hulks) and e
"ployed in raiſing ſand, ſoil, or gravel from the river Tha
"&c. &c. for ſuch term, not leſs than one year, nor exceed
"five years. Or, in caſe ſuch offender ſhall be liable to
"tranſported for fourteen years, not exceeding ſeven ye
"as the court ſhall think fit to order and adjudge."

† *Sect* 9. And it is alſo enacted par. 28. "That wh
"any male offender ſhall be lawfully convicted of any robbe
"or other felony without benefit of clergy, and mercy, n
"fied in writing, by a ſecretary of ſtate as aforeſaid, ſhall
"extended to ſuch offender, upon condition of being kept to h
"labour, during any ſpecified term, ſuch mercy may be allow
"in the ſame manner, as if there was a conditional pard
(a) Vide the act. "under the great ſeal, and the court (a) may, and ſhall
"der ſuch offender to be kept to hard labour, as aforeſaid, f
"the time ſpecified in the notification from the ſecretary
"ſtate."

N. B. This act inflicts the puniſhment of death upon thoſe who being ordered to hard labour inſtead of being capitally puniſhed, in any of the places of confinement mentioned in the act, ſhall break from their keepers or eſcape. But, as this part of the act was never carried in execution, the inſertion of it is omitted.

† *Sect.* 10. It is therefore further enacted by the ſaid ſtat
"of 19 Geo. 3. c. 74. "That if any perſon who hath be
"ordered to hard labour, inſtead of tranſportation, ſhall bre
"from the cuſtody of the keepers, or eſcape, they ſhall
"puniſhed by an addition of three years to the term
"which he, or ſhe, at the time of his, or her breach of priſ
"or eſcape was ſubject to be confined, and if ſuch perſon
"puniſhed by ſuch addition to the term of confinement, ſh
"afterwards be convicted of a ſecond eſcape, or breach of p
"ſon, he or ſhe ſhall be adjudged guilty of felony, with
"benefit of clergy."

Tranſportation to ſuch places as the king ſhall appoint.

† *Sect.* 11. But the difficulty of immediately finding p
per places, beyond the ſeas, for the purpoſes of tranſportatio
and it being found impracticable to carry all the provi
of the 19 Geo. 3. effectually into execution. It is enac
by 24 Geo. 3. ſeſ. 2. c. 56. which has continuance to the
June 1787, That where offenders ſhall be convicted at
aſſizes, or ſeſſions, in the manner, and under the circu
ſtances before mentioned, ſet forth more at large, un
title tranſportation at the end of chapter 33, in the
cond book, "of offences for which ſuch offenders ſhall
"liable to be tranſported, &c. it ſhall, and may be lawful
"the court to order and adjudge, that ſuch offenders ſo conv
"ed, ſhall be tranſported beyond the ſeas, for any term
"years, not exceeding the number for which they are liable

transported. And that in every such case it shall and may be lawful for his majesty, by, and with the advice of his privy council to declare and appoint to what place, or places, part, or parts beyond the seas, either within his majesty's dominions, or elsewhere, out of his majesty's dominions, such felons, or other offenders shall be conveyed or transported."

Death to return

Sect. 12. And it is further enacted by par. 5. "That if any offender who shall be so ordered, by any such court as aforesaid, to be transported beyond the seas, or who shall agree to transport himself, or herself, on certain conditions, either for life, or any number of years, to any such place, or places, part, or parts, as shall be appointed by his majesty, in manner aforesaid, shall be afterwards at large in Great Britain, or Ireland, without some lawful cause, before the expiration of the term for which such offender or offenders, shall have been ordered to be transported beyond the seas, or shall have so agreed to transport himself, or herself, as aforesaid, every such offender being at large, as aforesaid, being thereof lawfully convicted, shall suffer death without benefit of clergy."

N. B. The same mode of trial is appointed as by sect. 3. supra.

† *Sect.* 13. And it is further enacted by 25 Geo. 3. c. "That when any person or persons, shall be lawfully convicted, before any court competent for the trial of crimes in Scotland, of any offence for which the punishment of transportation may be inflicted, the court may adjudge such person or persons, to be transported beyond the seas, in like manner as is now in use, and his majesty, by and with the advice of his privy council, may declare and appoint what place or parts beyond the seas, either within his majesty's dominions, or elsewhere out of his dominions, such offenders shall be conveyed or transported."

Offenders in Scotland may be transported.

Sect. 14. And it is also further enacted, "That when his majesty shall extend his mercy to any offender under sentence of death in Scotland upon condition of transportation, signified by one of the principal secretaries of state, it shall be lawful for any court, having authority, to allow such offender, the benefit of a conditional pardon, and (except in cases where such offender shall be authorized by his majesty to transport himself) to order the same in the manner the act describes."

Judges may allow a pardon on that condition.

† *Sect.* 15. And it is further enacted, "That if any offender in Scotland, ordered for transportation, and such order cannot be conveniently executed, with respect to the place in such order mentioned, it shall be lawful for any two or more of the judges of the court of Justiciary, to order that such offen-

To such places as his majesty shall appoint.

"der

" der ſhall be tranſported to any other part beyond the ſ
" which ſhall have been appointed by his majeſty as aforeſaid."

† *Sect.* 16. And it is enacted by par. 3. " That if any
Returning, death without clergy. " fender or offenders, who ſhall be ſo ordered by ſuch court
" aforeſaid, to be tranſported beyond the ſeas, or who ſ
" agree to tranſport himſelf or herſelf, on certain conditio
" as aforeſaid, or who ſhall be ſo ordered by two judges
" the Juſticiary, ſhall be afterwards at large in Great Brit
" or Ireland, without ſome lawful cauſe, before the expira
" of the term for which ſuch offender ſhall have been order
" to be tranſported beyond the ſeas, or ſhall have
" agreed to tranſport himſelf, or herſelf, or ſhall have b
" ſo ordered by two juſtices of the court of Juſticiary,
" aforeſaid, every ſuch offender, on being thereof lawfully co
" victed, ſhall ſuffer death as in caſes of felony, without
" benefit of the clergy, by the law of England; and ſuch offe
" der being found at large in Scotland may be tried there b
" fore any court of competent juriſdiction for the trial of t
" original offence."

CHAP

CHAPTER THE FIFTY-NINTH.

OF MISPRISION OF FELONY.

FFENCES more immediately againſt the ſubject, not capital, are either miſpriſion of felony, or other inferior ces. 3 Inſt. 36. 1 Hale 374, 375 652, 708.

ct. 1. It is ſaid, that every felony includes miſpriſion of y, and may be proceeded againſt as a miſpriſion only, if the pleaſe, as hath been ſhewn already in chapter twenty. 1 B. Treſ. 25. 2 Rich. 3. 10. S. P. C. 32.

ct. 2. But generally miſpriſion of felony is taken for a ealment of felony, (1) or a procuring of the concealment eof, whether it be felony by the common law, or by ſtatute. Summary 129. S. P. C. 37. c. 3 Inſt. 139.

) Silently to obſerve the commiſſion of a felony, without uſing any endeavours to ehend the offender, is a miſpriſion. 1 Hale 431, 448, 533. 2 Hale 75. 2 Hawk. 2. For a man is bound to diſcover the crime of another, to a magiſtrate, with all ble expedition. 3 Inſt. 140. So alſo the concealment of treaſure trove, is miſpriſion lony. 4 Comm. 121. 3 Inſt. 133.

ct. 3. For this offence every common perſon is puniſha- by fine and impriſonment at common law. And by the ſta- of Weſtm. 3. Edw. 1. c. 9. "If the ſheriff, coroner, or ny other bailiff within a franchiſe, or without, for reward, r for prayer, or for fear, or for any manner of affinity, con- eal, conſent, or procure to conceal the felonies done in their iberties; or otherwiſe will not attach nor arreſt ſuch felons, there as they may) or otherwiſe will not do their office, for avour borne to ſuch miſ-doers, and be attainted thereof, they hall have one year's impriſonment, and after make a grievous ine at the king's pleaſure, if they have wherewith; and if hey have not whereof, they ſhall have impriſonment of three ears." B. Treſ. 25. 3 Inſt. 173.

Sect. 4. By 3 Hen. 7. c. 1. "The juſtices of the peace of every ſhire of this realm, for the time being, may take by their diſcretion an inqueſt, whereof every man ſhall have lands and tenements to the yearly value of forty ſhillings, at the leaſt, to enquire of the concealments of other inqueſts taken before them, and afore other, of ſuch matters and of- fences, as are to be enquired and preſented afore juſtices of the peace, whereof complaint ſhall be made by bill, or by bills, as well within franchiſe, as without. And if any ſuch concealment be found of any inqueſt, as is afore rehearſed, had or made within the year after the ſame concealment, every perſon of the ſame inqueſt to be amerced for the con- cealment, by diſcretion of the ſame juſtices of the peace; the ſaid amerciaments to be ſeſſed in plain ſeſſions."

Sect. 5.

1 Hale 619. S. P. C. 40. 3 Inſt. 134. Summary 130.

Sect. 5. To this title of miſpriſion of felony, that of ... bote ſeems not improperly reducible, which is where one ... only knows of a felony, but takes his goods again, or ... amends not to proſecute.

F. Cor. 353. 2 Hale 400. 2 And. 47. C. Eliz. 486, 536. B. 2. c. 29. ſ. 26, &c.

Sect. 6. This offence is very nearly allied to felony, ... is ſaid to have been anciently puniſhed as ſuch. But at ... day it is puniſhable only with ranſom and impriſonment, ... leſs it were accompanied with ſome degree of maintenance ... ven to the felon, which makes the party an acceſſary after ... fact.

B. Cor. 122,42. Aſſ. Sum. 130. 1 R. Abr. 67. F. Aſſ. 346.

Sect. 7. But the bare taking of one's own goods ag... which have been ſtolen, is no offence at all, unleſs ſome ... vour be ſhewn to the thief. (2)

(2) To take any reward for helping any perſon to ſtolen goods, is made felony ... Geo. 1. c. 11. And to advertiſe a reward for the return of things ſtolen, incurs a ... ture of fifty pounds, by 25 Geo. 2. c. 36. for which vide ante, appendix the eighth.

CHAPTER THE SIXTIETH.

OF SURETY OF THE PEACE.

INFERIOR offences more immediately againſt the ... ject not capital, either amount to an actual diſturbance ... the peace, or do not.

And firſt I ſhall conſider ſuch offences of this kind, ... amount to an actual diſturbance of the peace. But be... I deſcend to the ſeveral kinds thereof, it may not be impro... firſt to ſhew what ſecurity may be had againſt the breach of ... peace, before it happens.

And in order hereto, I ſhall examine how the breach ... be ſecured. Firſt, By ſurety for keeping the peace. Second... By ſurety for the good behaviour.

Dalt. c. 116. 4 Comm. 248.

As to ſurety for keeping the peace, I ſhall conſider ... following particulars: Firſt, In what caſes it ought to be ta... *ex officio*. Secondly, At whoſe requeſt it ought to be grant... Thirdly, Againſt whom it ought to be granted. Fourth... For what cauſe it is grantable. Fifthly, In what manner ... grantable by the courts of Chancery and King's Ben... Sixthly, In what manner it is grantable by a juſtice of pea... Seventhly, In what manner the proceſs for it ought to be ex... cuted. Eighthly, How ſuch proceſs may be ſuperſede... Ninthly, What ought to be the form of a recognizance ...

PENDIX THE FOURTEENTH.

OF ASSAULT WITH INTENT TO ROB.

THE old maxim of the criminal law, that *voluntas reputabitur pro facto* (a) continued to prevail in the reign of Henhe Fourth; and it was then agreed that if a man was indicted *il giſoit deprædando* it was felony (b)—But in the ninth year Edward the Fourth (c), a different doctrine began to be held; men were no longer puniſhed for crimes which they only litated, but had not actually committed (d); and ſince that the bare intention to commit a felony has been conſidered as miſdemeanor only, and puniſhable by fine, impriſonment, (e)

(a) 25 Edw. 3. pl. 32. 27 Aſſize 38. 1 Hale 532.
(b) Year book, 13 Hen. 4. 85.
(c) Year book, pl. 26. b. S. P. C. 27. b.
(d) Reeves' Hiſtory of Engliſh law, 3 vol. p. 413.
(e) Plowden 259. Caſes tempus Hardwick, 3 Inſt. 68.

Sect. 1. But the puniſhment as a miſdemeanor, not being nd ſufficiently terrific to reſtrain the frequency of the offence recited by 7 Geo. 2. c. 22. that whereas many of his majeſſubjects have of late frequently been put in fear and danger their lives, by wicked and ill diſpoſed perſons, aſſaulting and mpting to rob them; and whereas the puniſhment of ſuch nders is not adequate to the heinouſneſs of the crime, nor ſufent to deter wicked perſons from ſuch attempts; to the end refore that all perſons may be deterred from committing ſuch nces, and for the greater puniſhment of ſuch offenders, and the more effectually preventing the like miſchiefs in future. s enacted, "that if any perſon or perſons, with any offenſive weapon, or inſtrument unlawfully and maliciouſly, ſhall aſſault, or ſhall by menaces, or in or by any forcible or violent manner, demand any money, goods or chattels, of or from ny other perſon or perſons, with a felonious intent to rob, or commit robbery upon ſuch perſon or perſons, that then the offender, &c. ſhall be adjudged liable to be tranſported for ſeven years."

Sect. 2. And it is alſo enacted, "That if ſuch offender ſhall break gaol, or eſcape before tranſportation, or return before the expiration of the ſeven years, he ſhall ſuffer death without benefit of clergy."

Upon this act the following conſtructions have been made.

† *Sect.* 3. Firſt, that to compleat the crime not only the aſſault, as by holding a piſtol towards a coachman on his box telling him to ſtop; but a demand of the money or other prop muſt alſo actually be made.—But in this caſe (a) it was ſaid *Mr. Juſtice Chapple*, who tried the priſoner, that the dem need not be made in *expreſs* terms, for that a dumb man may a demand, as if he ſtop a perſon on the highway, and put his into the coach with a piſtol in his hand.

(a) The caſe of Peter Perfait, O. B. Dec. Seſſ. 1740, preſent Ch. Juſ. Willes who accorded to Chapples' opinion, and the priſoner was thereupon acquitted, M. S. Vide Hawk caſe, O. B. 1783. No. 538.

† *Sect.* 4. Secondly, that both the aſſault and the dem muſt be made upon the perſon intended to be robbed, for words of the act are, "that if any perſon ſhall aſſault, &c. "demand the money, &c. of any other perſon, with intent "rob, or commit robbery upon, *ſuch perſon.*" (b)

(b) Thomas's caſe, O. B. July Seſſ. 1784. by Mr, Juſt. Aſhhurſt.

† *Sect.* 5. Thirdly, that the aſſault muſt be made with offenſive weapon, and that the evidence muſt prove the aſſ was made with an offenſive weapon of the ſame kind as which is laid in the indictment.

† *Sect.* 6. Fourthly, that it is not neceſſary that the ind ment ſhould charge the intention to have been, in the very wo of the ſtatute "to rob or commit robbery"—it is ſufficient be laid "with a felonious intent to take his monies from his p ſon and againſt his will, feloniouſly to ſteal, take and carry a but that it would be more correct if the words "by force violence" were added (c)

(c) Rook's caſe, O. B. October Seſſ. 1785. Mr. Serjeant Adair, Recorder.

purpoſe. Tenthly, How ſuch a recognizance may be harged. Eleventhly, How ſuch a recognizance ought to ertified and proceeded upon. Twelfthly, How it may be ited.

ct. 1. As to the firſt point, *viz.* In what caſes ſurety of peace ought to be taken *ex officio*; it ſeems, that any juſ- of peace may, according to his diſcretion, bind all thoſe to peace, who in his preſence ſhall make any affray, or ſhall aten to kill or beat any perſon, or ſhall contend together hot words, or ſhall go about with unuſual weapons or at- ants, to the terror of the people; and alſo all ſuch perſons all be known by him to be common barrators; and alſo all e who ſhall be brought before him by a conſtable for a breach e peace in the preſence of ſuch conſtable, and all ſuch per- who, having been before bound to keep the peace, ſhall be icted of having forfeited their recognizance. (1)

Dalt. c. 67. 158. Lamb. 77, 78. 9 Ed. 4, 3. B. Peace, 7, 8. Cromp. 135, 142. 21 E. 4, 40. Foſter 135.

) Conſervators of the peace alſo may grant ſurety according to their diſcretion. 4 . 250. And this ſeems to have been the principal duty of a conſervator. 11 St. Tr. A ſecretary of ſtate, therefore, nor a privy counſellor, ever bind to the peace or the behaviour, for they are not, as ſuch, conſervators of the peace. Lord Holt, indeed, he caſe of Kendal and Roe, ſo conſidered them; but Lord Cambden affirms that no iſe, caſe, record, or ſtatute, has ever called them conſervators of the peace from the nning of time down to that deciſion. 11 St. Tr. 317.

ct. 2. As to the ſecond point, *viz.* At whoſe requeſt the ty of the peace ought to be granted; it ſeems agreed at this that all perſons whatſoever under the king's protection, be- of ſane memory, whether they be natural and good ſub- , or aliens, or attainted of treaſon, *&c.* have a right to de- d ſurety of the peace.

Dalt. c. 68. Lamb. 78, 79. Crom. 133, 134.

ct. 3. But it has been queſtioned, whether Jews or pa- , or perſons attainted of *præmunire*, have a right to it or

Dalt. c. 68. Lamb. 80. 4 Comm. 250.

ct. 4. However it is certain, that a wife may demand it inſt her huſband treatening to beat her outrageouſly, and that uſband alſo may have it againſt his wife. (2)

Regiſter 89. 3 Keb. ſ. 433. Ld. Hard. caſes, 74.

range, 1207. Dalt. c. 68. Lamb. 78. Crom. 133. 3 Lev. 128. F. N. B. 80.

) And if the marriage is diſputed, the court will order the recognizance to be worded not to admit the fact. Str. 1231.

ct. 5. As to the third point, *viz.* Againſt whom the ty of the peace ought to be granted, there ſeems to be no bt but that it ought, upon a juſt cauſe of complaint, to be ted by any juſtice of peace, againſt any perſon whatſoever, under

Dalt. c. 68. Lamb. 81, 82. Cromp. 134. 3 Keb. 433. 2 Lev. 128.

under the degree of nobility, being of ſane memory, wh
he be a magiſtrate or private perſon, and whether he be of
age, or under age, &c. But infants and femes covert ou
find ſecurity by their friends, and not to be bound themſe
and the ſafeſt way of proceeding againſt a peer is by compla
the court of chancery or king's bench. (2)

See the books above cited, and Fitz. ſubpœna 20.

(2) It is ſaid the fear of one cannot be the fear of another, and therefore every
nizance muſt be ſeparate. Pult. 18. but in Mich. 23 Geo. 2. B. R. the court a
three women to file joint articles of the peace againſt three men. The King v.
&c. MSS.

Dalt. c. 67.
Lamb. 82.
Crom. 135.
1 Lev. 107.
2 Lev. 228.
F. N. B. 801.
Reg. 88.
Moor. 874.
Godb. 215.
1 Keb. 290.

Sect. 6. As to the fourth point, *viz.* For what cauſe the
of the peace is grantable; it ſeems clear, that, wherever a
ſon has juſt cauſe to fear that another will burn his houſe,
him a corporal hurt, as by killing or beating him, or that he
procure others to do him ſuch miſchief, he may demand
ſurety of the peace againſt ſuch perſon; and that every
of peace is bound to grant it, upon the party's giving him
faction upon oath, that he is actually under ſuch fear; and
he has juſt cauſe to be ſo, by reaſon of the other's having th
ened to beat him, or lain in wait for that purpoſe; and th
does not require it out of malice, or for vexation.

Dalt. c. 67.
Lamb. 82, 83.
Con. 17 Ed. 4. 4.
B. Peace 22.
Crom. 134.

Sect. 7. It ſeems alſo the better opinion, that he wh
threatened to be impriſoned by another, has a right to de
the ſurety of the peace; for every unlawful impriſonment
aſſault and wrong to the perſon of a man: And the objection,
one wrongfully impriſoned may recover damages in an ac
&c. and therefore needs not the ſurety of the peace, is as fi
in the caſe of battery as impriſonment, and yet there is no do
but that one threatened to be beaten may demand the ſure
the peace. (3)

(3) And although the fact from which the fear ariſes be pardoned, the court wil
ceive it as a ground to grant the ſecurity upon. Str. 473.

Sect. 8. As to the fifth point, *viz.* In what manner
ſurety is grantable by the courts of chancery and king's be
it is enacted by 21 Jac. 1. c. 8. "That all proceſs for

See 1 Lev. 53.
1 Sid. 67.
Skin. 61.
Mullineuxscaſe.
Comb. 427.
Bac. Ab.

"peace or good behaviour to be granted or awarded ou
"the ſame courts, or either of them, againſt any perſo
"perſons whatſoever at the ſuit of, or by the proſecuti
"any perſon or perſons whatſoever, ſhall be void and of
"effect, unleſs ſuch proceſs ſhall be ſo granted or awar
"upon motion firſt made before the judge or judges o
"ſame courts reſpectively, (ſitting in open court, and
"declaration in writing upon their corporal oaths, to be
"exhibited unto them, by the parties which ſhall deſire
"proceſs) of the cauſes for which ſuch proceſs ſhall
"granted or awarded, by or out of the ſaid courts reſpecti
"and unleſs that ſuch motion and declaration be menti

be made upon the back of a writ; the ſaid writings there be entered and remain of record; and that if it ſhall afterwards appear unto the ſaid courts, or either of them reſpectively, that the cauſes expreſſed in ſuch writings, or any of them, be untrue, That then the judge or judges of the ſaid courts, or either of them reſpectively, ſhall and may award ſuch coſts and damages unto the parties grieved, for their, or any of their wrongful vexations in that behalf, as they ſhall think fit; and that the party or parties ſo offending, ſhall and may be committed to priſon by ſuch judge or judges, until he or they pay the ſaid coſts and "damages. (4)

(4) A peer or peereſs cannot be bound over in any other place than the courts of king's bench or chancery. 4 Comm. 251. A peereſs may demand it againſt her lord, as in the caſe of the Marquis of Carmarthen. Foſter 359. Lord Vane, Str. 1202. Earl of Kilmorey. Hardw. caſes 74. Earl Ferrers. Burr. 631, 703. Lady Strathmore, Eaſt. 6 Geo. 3. Lord Howard, 11 Mod. 109. Alſo 3 Burr. 1922. The articles muſt be verified by the *oath* of the exhibitant; an *affirmation* thereof is not ſufficient. Str. 527. 11 Mod. 243. Nor will the court permit the truth of the allegations to be controverted by the defendant, but will order ſecurity to be taken immediately, if no objections ariſe on the face of the articles themſelves. Str. 1202. But if on an application for the aſſiſtance of the court to enforce the ſubſequent proceſs, the articles ſhould manifeſtly appear, from the corroborated affidavit of the defendant, to have been a *malicious*, *voluntary*, *groſs perjury*, the court will reſiſt the application, and commit the offender. 2 Burr. 1099. 3 Burr. 1922. Nor will the court receive articles of the peace, if the parties live at a diſtance in the country, unleſs they have previouſly made application to a juſtice in the neighbourhood. 2 Burr. 780. And if the court do receive them, the ſecondary may enforce the attachment, in the ſum required, and order a juſtice of the country to take ſecurity. 2 Burr. 1039. 1 Black. 233. Or, if very particular circumſtances attend the caſe, the court will compel the juſtices by mandamus. Strange 835. But this is a ſingular inſtance, vide Sayer 253.

Sect. 9. As to the ſixth point, *viz.* In what manner ſuch ſurety is grantable by a juſtice of peace, it ſeemeth certain, that if the perſon to be bound be in the preſence of the juſtice, he may be immediately committed, unleſs he offer ſureties; and from hence it follows, *a fortiori*, that he may be commanded by word of mouth to find ſureties, and committed for his diſobedience; but it is ſaid, that if he be abſent, he cannot be committed without a warrant from ſome juſtice of peace, in order to find ſureties, and that ſuch warrant ought to be under ſeal, and to ſhew the cauſe for which it is granted, and at whoſe ſuit, and that it may be directed to any indifferent perſon. (5)

14 H. 7, 8, 9, 10. 9 Ed. 4, 3. B. Mampr. 39. Lamb. 85, &c. Dalt. c. 69. 2 Wilſ. 158.

(5) A juſtice cannot enjoin another to keep the peace under a penalty. 3 Com. Dig. Nor commit for not finding ſecurity, until the party has been required, and has refuſed ſo to do. Per Pratt. King v. Wilks, E. 3 Geo. 3.

Sect. 10. As to the ſeventh point, *viz.* In what manner proceſs for the peace ought to be executed. It ſeems needleſs to give a particular account of the execution of the writ of *ſupplicavit*, becauſe I do not find that it is much in uſe at this day, and therefore I ſhall refer the reader for this purpoſe to *Fitzherbert's Natura Brevium*, fol. 80, *&c.* But as to the incurion of a warrant of a juſtice, the following rules are to be obſerved. (6)

Reg. 88. 1 Keb. 203, 290. 6 Mod. 43. 2 Peere Will. 202. Skinner 61. 2 Keb. 305. 1 Sid. 67. 1 Lev. 53.

(6) If there be no proceedings on a ſupplicavit within a year, the recognizance is, of courſe, diſcharged; and if the party be committed after the expiration of that time, he ſhall be

be discharged upon very slight security. Fitzg. 268. If taken below, and the party appear pursuant to the condition, no indictment being lodged, he must be discharged. Hard. Ca. But the court in discretion may refuse to discharge a recognizance, even though the exhibitant appear and consent; for a breach against any other person is equally a forfeiture. 11 Mod. 109.

Lamb. 89.

Sect. 11. First, it can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may either by parole, or by precept in writing, authorize an officer sworn and known, to serve it, but cannot impower any other person without a precept in writing.

L. Quinto.
5 Ed. 4. 12, 13.
B. false imp. 18
Dalt. c. 69.
Lamb. 90, 91.
Crom. 235.
5 Co. 59.
6 Co. 54.
5 Co. 59.

Sect. 12. Secondly, If the warrant be made in the common form, directing the officer to cause the party complained of to come before some justice of the peace to find sufficient surety, &c. and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, &c. the officer who serves it, before he makes any arrest, ought first to require the party to go with him and find sureties according to the purport of the warrant, but upon his refusal to do either, he may carry him to the goal by force of the same warrant without more.

Dalt. c. 69.
Brook false imprisonment 11.
21 H. 7. 21.
Lamb. 94, 95.

Sect. 13. Thirdly, If the warrant specially direct, that the party shall be brought before the justice who made it, the officer ought not to carry him before any other. But if the warrant be general, to bring him before any justice of peace, &c. the officer has the election to bring him before what justice he pleases, and may carry him to prison for refusing to find surety before such justice.

Dalt. c. 69.

Sect. 14. As to the eighth point, *viz.* How such process may be superseded. It is said, That if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the peace of the same county, either before or after a warrant is issued against him, he may have *supersedeas*, from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such surety. Also it is said, That an appearance upon a recognizance for the peace may be superseded, by finding sureties in the chancery or king's bench, and purchasing a writ testifying the same. But this practice having often been abused by turbulent persons, who deservedly fearing to be bound to the peace or good behaviour, by justices of peace, would procure themselves to be bound thereto in the said courts, upon insufficient sureties, or upon the colourable prosecution of some person who would be ready at all times to release them at their pleasure; whereupon writs of *supersedeas* had been often directed to justices of peace, commanding them to forbear to arrest the parties in such causes; by reason whereof such turbulent persons used to misdemean themselves among their neighbours with impunity, as it is recited by 21 Jac. 1. c. 8. It is thereupon enacted

Lamb. 112, 113.
See 2 R. Abr. 492.

ſaid ſtatute, "That all writs of ſuperſedeas, to be granted
ut of either of the ſaid courts, ſhall be void, unleſs ſuch
roceſs be granted upon motion in open court firſt made, &c.
pon ſuch ſufficient ſureties, as ſhall appear unto the judge 2 Chan. Rep. 68.
r judges of the ſame court reſpectively, upon oath, to be
ſſeſſed at five pounds lands, or ten pounds in goods, in the
ubſidy book, at the leaſt; which oaths, and the names of
uch ſureties, with the places of their abode, and where they
and ſo aſſeſſed in the ſubſidy books, ſhall be entered, and re- Vide ante, ſ. 8.
ain of record in the ſame courts: And unleſs it ſhall alſo 2 Burr. 806.
rſt appear unto the ſaid judge or judges, from whom ſuch
uperſedeas is deſired, That the proceſs of the peace, or good
ehaviour, is proſecuted againſt him or them, deſiring ſuch
uperſedeas *bona fide*, by ſome party grieved, in that court,
ut of which ſuch ſuperſedeas is deſired to be ſo awarded and
irected."

Sect. 15. As to the ninth point, *viz.* What ought to be
form of ſuch a recognizance. If it be taken in purſuance
writ of *ſupplicavit*, it muſt be wholly governed by the di-
tions of ſuch writ; but if it be taken before a juſtice of
ce, upon a complaint below, it ſeems that it may be regu- Lamb. 100, 101.
d by the diſcretion of ſuch juſtice, both as to the number Dalt. c. 70.
ſufficiency of the ſureties, and the largeneſs of the ſum,
the continuance of the time, for which the party ſhall be
nd. And it hath been ſaid, That a recognizance to keep
peace as to *A. B.* for a year, or for life, or without ex-
ſſing any certain time, (in which caſe it ſhall be intended
e for life) or without fixing any time or place for the par-
appearance, or without binding him to keep the peace againſt
the king's people in general, is good.

Sect. 16. However, it ſeems to be the ſafeſt way to bind 3 Com. Dig. 371
party to appear at the next ſeſſions of the peace, and in Lamb. 105.
mean time to keep the peace as to the king, and all his Dalt. c. 124.
e people, eſpecially as to the party, according to the com-
n form of precedents.

Sect. 17. As to the tenth point, *viz.* How ſuch a recog- (a) B. Peace
nce may be diſcharged. It ſeems agreed, That it may 15, 17.
diſcharged by the demiſe of the (a) king in whoſe reign it 1 H. 7. 2, 10.
taken, or of the (b) principal party who was bound (b) 15 H. 7. 2.
reby, if it were not forfeited before. Alſo it hath been 13.
den, That it may be diſcharged by the (c) releaſe of the 21 Ed. 4. 70.
y at whoſe complaint it was taken, being certified together Dalt. c. 71.
h it. But this may juſtly be queſtioned, becauſe the re- 1 Lev. 235.
nizance is not to the ſubject, but to the king, and conſe- (c) Lamb. 110, &c.
ntly cannot be diſcharged by the ſubject, who is not a party Crom. 139. 169
it. However, ſuch a releaſe will be a good inducement to 144.
court, to which ſuch a recognizance ſhall be certified, to diſ- 11 H. 7. 12.
rge it; and ſo alſo will the non-appearance of the party at 11 H. 4. 43.
B. 2. c. 36.
f. 64: c. 37.
f. 34.
2 Vent. 131.

Savil 53. 1 Lev. 235. C. Jac. 282. Yelv. 207. 12 Mod. 251. Str. 835. 2 P. Will. 202. 1 Burr. 703. 3 Burr. 1922.

whoſe complaint it was taken, in order to pray the continua of it; and yet it is ſaid, that the ſeſſions in that caſe may, their diſcretion, refuſe to diſcharge it. However, it is certa that ſuch a recognizance cannot be pardoned, or releaſed by king, before it is broken, becauſe the ſubject has a kind of tereſt in it. And it is ſaid, That the ſureties are not diſcharg by their death, but that their executors, &c. continued bou as their teſtators, &c. were.

Lamb. 111, 112. &c. Dalt. c. 70. Hil. 1 Geo. 1. K. v. Combs agreed.

Sect. 18. As to the eleventh point, *viz.* How ſuch a re cognizance ought to be certified, and proceeded upon. If it taken by force of a writ of *ſupplicavit*, it needs not be cer ed till the juſtice receive a writ of *certiorari* to that purpoſe but if it be taken upon a complaint below, it muſt be certi ſent, or brought to the next ſeſſions of the peace by force Hen. 7. c. 1. that the party ſo bound may be called; and the ſame ſtatute, "If the party then make default, the " default ſhall be then recorded, and the ſame recognizance " the record of the default, ſhall be certified into the chance " king's bench, or exchequer." However, if the party any excuſe for his not appearing, it ſeems that the ſeſſions bound peremptorily to record his default, but may equit conſider of the reaſonableneſs of ſuch excuſe. And it is That the ſeſſions cannot in any caſe proceed againſt the party a forfeiture of his recognizance, either in reſpect of his no pearing, or breaking the peace; but that the recognizance ſuch caſe ought to be removed into ſome of the king's court Weſtminſter-hall, who ſhall proceed by *ſcire facias*, upon recognizance, and not by indictment, &c.

Sayer 253. Dalt c. 71. Raym. 169. 196. C. Jac. 598. 1 R. A. 900. Parker 54.

3 Bulſt. 120. Whether ſuch ſcire facias muſt ſhew the day on which the ſeſſions was holden,

Sect. 19. It ſeemeth that in a *ſcire facias* upon ſuch a re nizance, it is ſufficient to lay the fact alledged for the bre thereof, as having been done *contra pacem*, without uſing words *vi & armis*.

till which the party was bound to keep the peace. C. Car. 138.

B. Peace 20. Dalt. c. 72. Lamb. 127, 128. Sayer 139.

Sect. 20. As to the twelfth point, *viz.* How ſuch reco zance may be forfeited. There is no doubt but that it may forfeited by any actual violence to the perſon of another, ther it be done by the party himſelf, or by others thro' his curement, as manſlaughter, rape, robbery, unlawful im ſonment, &c.

Lamb. 115. &c. Dalt. c. 72. 2 H. 7. 2 ſeems otherwiſe. 18 Ed. 4. 28. 22 Ed. 4. 35. C. Car. 498, 499. Pl. 2, 3, 4, 5, 6. 7, 8.

Sect. 21. Alſo it has been holden, That it may be forfe by any treaſon againſt the perſon of the king, and alſo by unlawful aſſembly *in terrorem populi*, and even by words dir tending to a breach of the peace, as by challenging one to or in his preſence, threatning to beat him, &c.

See the books cited in the following ſection; and 2 R. Abr. 547. F. 3.

Sect. 22. However, it ſeems that it ſhall not be forfeited bare words of heat and choler; as the calling a man knave, ller of lies, raſcal, or drunkard; for though ſuch words may ovoke a cholerick man to break the peace, yet they do not ectly challenge him to it, nor does it appear that the aker deſigned to carry his reſentment any farther. And it s been ſaid, That even a recognizance for the good be- viour, ſhall not be forfeited for ſuch words; from whence follows *a fortiori*, That a recognizance for the peace ſhall t. Sayer 140. C. Eliz. 86. Moor 249. 2 Roll. 199, 227. Palmer 126. Infra. p. 261.

Sect. 23. Alſo there are ſome actual aſſaults on the perſon another, which do not amount to a forfeiture of ſuch a re- gnizance; as if an (a) officer, having a warrant againſt one o will not ſuffer himſelf to be arreſted, beat or wound him the attempt to take him; or if a (b) parent in a reaſonable nner chaſtiſe his child, or a maſter his ſervant, (c) being ually in his ſervice at the time; or a (d) ſchoolmaſter his holar, or a (e) gaoler his priſoner, or even a (f) huſband wife, as ſome ſay; or if (g) one confined a friend who is d, and bind, and beat him, *&c.* in ſuch a manner as is per in ſuch circumſtances; or if a man (h) force a ſword m one who offers to kill another therewith; or if a man ntly lay his hands upon another, and thereby ſtay him from iting a dog againſt a third perſon; or if (i) I beat one (with- (k) wounding him, or throwing at him a dangerous wea- n) who wrongfully endeavours with violence to diſpoſſeſs me my land, or goods; or the goods of another delivered to me be kept for him, and will not deſiſt upon my laying my hands ntly on him, and diſturbing him; or if a man beat, (l) or, ſome ſay, wound, or maim one who makes an aſſault upon perſon, or that of his (m) wife, parent, child, or maſter; pecially if it appear that he did all he could to avoid fighting fore he gave the wound; or if a man fight with or beat e who attempts to kill any ſtranger; or if a man even (o) reaten to kill one who puts him in fear of death in ſuch a ce where he cannot ſafely fly from him; or if one (p) im- iſon thoſe whom he ſees fighting, till the heat is over. (a) 2 Ed 4. 6. 21 H. 7. 39. (b) Dalt. c. 72. Crom. 136. (c) 38 H. 6. 25. 1 Sid. 176. (d) Sum. 31. 1 Sid. 177. 21 Ed. 4. 6. (e) Dalt. c. 72. (f) Crom. 28. 136. F. N. B. 80. Hetley 149. Con. 1 Sid. 113, 116. (g) 22 Aſſ. 56. 2 R. A. 546. 22 Ed. 4. 5. (h) C. Jac. 134. 2 R. A. 546. (i) 3 H. 4. 6. 9. Lutw. 1483. C. Jac. 236. C. Car. 138. 19 H. 6. 31. 10 E. 4. 6. 11 Ed. 4. 28. Keilw. 92. Yelv. 172. 2 R. A. 547. 8, 549. Pult. 5, 6. Crom. 137. Dalt. c. 72. Inf. c. 64. ſ. 1. (k) 2 R. Abr. 548. 41 Aſſ. 21. 27 Ed. 3. 94. 25 Ed. 3. 42. 8 H. 4. 8. 9 Ed. 4. 48. 12 Ed. 4. 6. Tort. Dem. 57. 1 Sid. 246. Kely. 128. 2 R. Abr. 547. 1 Keb. 884, 921. 2 ſt. 316. (m) 35 H. 6. 50, 51. 19 H. 6. 31, 66. 12 Ed. 4. 6. Crom. 136. Dalt c. 2 R. Abr. 546. (n) 12 H. 8. 2. (o) 32 H. 6. 18. 10 Ed. 4. 6. (p) 2 R. Abr. 9. 22 E. 4. 45.

Sect. 24. According to ſome opinions, a (q) maſter ſhall forfeit ſuch a recognizance for beating another in defence his ſervant. But it is ſaid, That a (r) ſervant is liable to ch forfeiture for beating another in defence of his maſter's (q) 2 R. Ab. 546. 19 H. 6. 31, 66. Dalt. c. 72. Crom. 136. Con. 9 Ed. 48. Salk. 407. (r) 9 Ed. 4. 48. B. Treſ. 189.

ſon,

ſon, though he were commanded by the maſter ſo to do, b
cauſe he is not a ſervant to the ſon; and for the like reaſon i
(a) Dalt. c. 72. Lamb. 129. ſaid, That a (a) tenant ſhall incur the like forfeiture for be
ing another in defence of his landlord, &c.

Crom. 136. Dalt. c. 72. C. Eliz. 86. Moor. 249. *Sect.* 25. But it ſeems agreed, That no one ſhall for
ſuch a recognizance by a bare treſpaſs of another's lands,
goods, unleſs it be accompanied with ſome violence to
perſon.

Dalt. c. 22. B. Co. 229. F. Bar. 244. *Sect.* 26. And it ſeems to be the better opinion, T
a man is in no danger of ſuch a forfeiture from any hurt d
to another, by playing at cudgels, or ſuch like ſport, by c
ſent, becauſe the intent of the parties ſeems no way unlaw
but rather commendable, and tending mutually to promote
tivity and courage. Yet it is ſaid, That he who wounds a
ther in fighting with naked ſwords, does in ſtrictneſs for
ſuch a recognizance, becauſe no conſent can make ſo danger
a diverſion lawful.

Hobart. 134. 2 R. Ab. 548. *Sect.* 27. But it ſeemeth, That a man ſhall not forfeit
recognizance, by a hurt done to another merely through n
gence, or miſchance; as where one ſoldier hurts another
diſcharging a gun in exerciſe, without ſufficient caution;
notwithſtanding ſuch perſon muſt, in a civil action, give
other ſatisfaction for the damage occaſioned by his want
care, yet he ſeems not to have offended againſt the pur
of ſuch a recognizance, unleſs he be guilty of ſome wi
breach of the peace.

CHAPTER THE SIXTY-FIRST.

OF SURETY FOR THE GOOD BEHAVIOU

4 Comm. 248, 251. 253. AND now we are come to ſurety for the good b
haviour, which being of great affinity with ſurety
the peace, both as to the manner in which it is to be tak
ſuperſeded, and diſcharged, &c. ſeems not to require a pa
cular conſideraiton, ſave only as to the following points, F
For what miſbehaviours it is to be required.—Secondly,
what it ſhall be forfeited.

Sect. 1. As to the firſt point, it is to be obſerved, T
by 34 Edw. 3. c. 1. "Juſtices of peace are empow
"to reſtrain offenders, rioters, and all other barrators,
"to purſue, arreſt, take, and chaſtiſe them, according
"their treſpaſs, or offence; and to cauſe them to
"impriſoned, and duly puniſhed according to the laws
"cuſt

cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions, and good adviſement, and alſo to inform them, and to enquire of all thoſe who have been pillors and robbers in the parts beyond the ſea, and be now come again, and go wandring, and will not labour as they were wont in times paſt, and to take and arreſt all thoſe that they may find by indictment or by ſuſpicion, and to put them in priſon, and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king, and his people, and the other duly to puniſh, to the intent that the people be not by ſuch rioters troubled nor indamaged, nor the peace blemiſhed, nor merchants, nor others paſſing by the highways of the realm diſturbed, nor put in the peril which may happen of ſuch offenders."

Vide Barlow 524.

Sect. 2. In the conſtruction hereof there ſeem to have been me opinions, that the ſtatute, ſpeaking of thoſe that be not of od fame, means only ſuch as are defamed, and juſtly ſuſpect- that they intend to break the peace, and that it does not any ay extend to thoſe who are guilty of other miſbehaviours not lating to the peace. But this ſeems much too narrow a conruction, ſince the abovementioned expreſſion of perſons of evil me, in common underſtanding, as properly includes perſons of andalous behaviour in other reſpects, as thoſe who by their arrelſome behaviour give juſt ſuſpicion of their readineſs to reak the peace. And, accordingly, it ſeems to have been alays the better opinion, That a man may be bound to his good ehaviour for many cauſes of ſcandal which give him a bad me, as being contrary to good manners only; as for (a) hauntg bawdy-houſes with women of bad fame; and for (b) keeping ad women in his own houſe; or for ſpeaking words of contempt f an inferior (c) magiſtrate, as a juſtice of peace, or mayor of town, &c. though he be not then in the actual execution of is office, or of an inferior officer of juſtice, as a conſtable, and uch like, being in the actual execution of his office.

4 Inſt. 181. 2 H. 7. 2. 3. 13 H. 7. 10. Pulton 18.

4 Burn 270. Lamb. 115, 116, 117. Dalt. c. 75.

12 Mod. 566. (a) 13 H. 7. 10. (b) Crom. 140. (c) C. Eliz. 78. 1 Levin. 52, 53. 107. 11 Co 98. 1 Roll. 224. Latch. 220. Con. C. Eliz. 689. 449. Palmer 130. 1 Roll. 227. 228. 3 Bulſt. 139. 140. Cro. Car. 409.

Sect. 3. However, it ſeems the better opinion, That no one ught to be bound (d) to the good behaviour for any raſh, quarelſome, or unmannerly words, unleſs they either directly tend o a breach of the peace, or to ſcandalize the government, by abuſing thoſe who are intruſted by it with the adminiſtration of juſtice or to deter an officer from doing his duty; and therefore t ſeems, That he (e) who barely calls another rogue, or raſcal, or teller of lies, drunkard, &c. ought not for ſuch cauſe to be bound to the good behaviour.

(d) C. Car. 498, 499. (e) C. Eliz. 86. Moor 249. Sup. c. 60. ſ. 22. 2 Roll. 299, 227. Palmer 126.

Sect.

Sect. 4. However, I cannot find any certain preciſe rule for the direction of the magiſtrate in this reſpect, and therefore am inclined to think, that he has a diſcretionary power to take ſuch ſurety of all thoſe whom he ſhall have juſt cauſe to ſuſpect to be dangerous, quarrelſome, or ſcandalous, as of thoſe who ſleep in the day, and go abroad in the night, and of ſuch as keep ſuſpicious company, and of ſuch as are generally ſuſpected to be robbers, *&c.* and of eve-droppers, and common drunkards, and all other perſons, whoſe miſbehaviour may reaſonably be intended to bring them within the meaning of the ſtatute, as perſons of evil fame, who, being deſcribed by an expreſſion of ſo great latitude, ſeem in a great meaſure to be left to the judgment of the magiſtrate. But if he commit one for want of ſureties, he muſt ſhew the cauſe, *&c.* with convenient certainty. (1)

Dalt. 75.
1 Roll. 150.
2 Ven. 22, 23, 24.

(1) Security for good behaviour may be taken. For uſing opprobrious terms in a court of juſtice, 1 Lev. 107. Accuſing juſtices of ignorance in the Exciſe laws. 1 Vent. 18. Publiſhing an obſcene book. Poſt. 193. For exciting diſcontents in the minds of the people. 2 Vent. 24. For offering medicines to deſtroy a child in the womb. Cro. Eliz. 449. For obſtructing another on his neceſſary way to a court of juſtice. 2 Lill. Reg. 649. For diſturbing a licenced preacher. 1 Mar. ſ. 2, 3. For unlawful fiſhing or hunting. 5 Eliz. c. 21. For neglecting church a month. 23 Eliz. c. 1. For hunting or ſtealing deer or conies. 1 Jac. 1. c. 13. ſed vide 16 Geo. 3. c. 20. And it is a uſual part of the judgment in a miſdemeanour. 4 Bac. Ab. 698. But a juſtice of the peace cannot compel the ſecurity upon a general information. Str. 16. And whether a perſon taken upon the warrant of a ſecretary of ſtate for a libel, ſhall give ſecurity for his good behaviour, ſeems unſettled. 1 Wilſ. 29. ſed vide 2 Wilſ. 160. And for a very full account of this title, 4 Burn 269, 283.

Sect. 5. As to the ſecond point, *viz.* For what miſbehaviours ſuch a recognizance ſhall be forfeited, it is laid down as a general rule in the argument of *Stamp* and *Hide*'s caſe, That whatever will be a good cauſe to bind a man to his good behaviour, will forfeit a recognizance for it. Yet this is ſince denied in *Heyward*'s caſe; and indeed does by no means ſeem to be maintainable, becauſe the ſtatute in ordering perſons of evil fame to be bound in this manner, ſeems in many caſes chiefly to regard the prevention of that miſchief which they may juſtly be ſuſpected to be likely to do; and in that reſpect requires them to ſecure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them, or not; and it would be extremely hard in ſuch caſes to make perſons forfeit their recognizance, who yet may juſtly be compellable to give one, as thoſe who keep ſuſpicious company, or thoſe who ſpend much money idly, without having any viſible means of getting it honeſtly, or thoſe who lie under a general ſuſpicion of being rogues, *&c.*

Palm. 129, 130.
C. Car. 499.
13 H. 7. 10.
Dalt. c. 75.

Sect. 6. However, it ſeems that ſuch a recognizance ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited, but alſo for ſome others, for which ſuch a recognizance cannot be forfeited; as for going armed with great numbers to the ter-

2 H. 7. 2.
C. Eliz. 86.
Moor 249.
2 Roll. 228, 150, 199.
C. Car. 499.

ror

of the people, or ſpeaking words tending to ſedition, &c. 2 Leo. 160.
alſo for all ſuch actual miſbehaviours which are intended Godb. 622. 22.
be prevented by ſuch a recognizance, but not for barely giv- Lamb. 116, 118.
cauſe of ſuſpicion of what perhaps may never actually hap- C. Jac. 412.

t may be diſcharged on motion on producing proſecutor's conſent, verified by affida- Hardwick's caſe, 158. Or conſenting by counſel. 1 Burr. 703. Sed vide ch. 60.

CHAPTER THE SIXTY-SECOND.

Of ASSAULTS and BATTERIES.

AND now I am come to conſider the ſeveral kinds of actual diſturbances of the peace, and theſe are; either, Such may be committed by one or two perſons; or, Such as require reat number.

Thoſe which may be committed by one or two perſons, are, ſaults and batteries; or, Affays; or, Forcible entries and ainers.

As to aſſaults and batteries, I ſhall conſider the following par- ulars: Firſt, What ſhall be ſaid to be an aſſault. Secondly, hat ſhall be ſaid to be a battery. Thirdly, In what caſes y may be juſtified. Fourthly, in what manner they are to puniſhed.

Sect. 1. As to the firſt point. It ſeems that an aſſault is an Pulton 4.
empt, or offer, with force and violence, to do a corporal hurt 6 Mod. 173,
another; as by ſtriking at him with, or without, a weapon; 174.
preſenting a gun at him, at ſuch a diſtance to which the gun 2 R. Abr. 545.
ll carry, or pointing a pitch-fork at him, ſtanding within the 1 Vent. 256.
ch of it; or by holding up one's fiſt at him, or by any other 1 Mod. 3.
h like act done in an angry threatening manner; and from 1 Keb. 921.
nce it clearly follows, That one charged with an aſſault and 41 Ed. 3. 40.
ttery, may be found guilty of the former, and yet acquitted of 42 Ed. 3. 7.
latter. But every battery includes an aſſault, therefore on 45 Ed. 3. 24, 25.
indictment of aſſault and battery, in which the aſſault is ill 22 Aſſ. 60.
d, if the defendant be found guilty of the battery, it is ſuffici- 2 R. Abr. 545.
. Notwithſtanding the many ancient opinions to the contrary, 10 Mod. 187.
ſeems agreed at this day, that no words whatſoever can amount 2 Keb. 545.
an aſſault. Law of Evid. 255.

Sect. 2. As to the ſecond point, *viz.* What ſhall be ſaid 22 Aſſ. 11.
be a battery. It ſeems that any injury whatſoever, be it Pult. 3.
ver ſo ſmall, being actually done to the perſon of a man, in an Lamb. 126.
gry, or revengeful, or rude, or inſolent manner, as by ſpit- Salk. 384,
g in his face, or any way touching him in anger, or violent- 6 Mod. 149, 172.
ly 1 Mod. 3.

ly joſtling him out of the way, are batteries in the eye of
3 Lev. 404. law. But it is ſaid to be no battery to lay one's hand gently
Skin. 387. another whom an officer has a warrant to arreſt, and to tell
2 R. Ab. 546. officer that this is the man he wants.

6 Mod. 172. *Sect.* 3. As to the third point, *viz.* In what caſes an aſſa
230, 263. and battery may be juſtified. This is ſo fully ſet forth alre
4 Comm. 155. in the chapter of *Surety of the Peace*, that there ſeems to be
216. need of any farther conſideration thereof in this place; and the
11 Mod. 43, 52. fore I ſhall only add, That where a man in his own defe
2 Salk. 642. beats another who firſt aſſaults him, *&c.* he may take an adv
L. Ray. 177. tage thereof upon an indictment, as well as upon an action;
1 Sid. 246. with this difference, that in the firſt caſe he may give it in e
Hoſt. 699. dence upon the plea of Not-guilty, and in the latter he
plead it ſpecially.

Sect. 4. As to the fourth point, *viz.* How unlawful aſſa
8 Mod. 283. and batteries are puniſhed, there is no doubt but that the wr
1 Bac. Ab. 156. doer is ſubject, both to an action at the ſuit of the party, wh
in he ſhall render damages, *&c.* and alſo to an indictment,
the ſuit of the king wherein he ſhall be fined according to
heinouſneſs of the offence.

† *Sect.* 5. By 5 Hen. 4. c. 6. and 11 Hen. 6. c. 11. "
Form of indict- " aſſault or affray any of the members of the houſe of lords,
ment, Cro. Cir. " houſe of commons, or other council of the king, or an
121. " their ſervants, in their way to, or attendance on parliam
" is puniſhable, upon non-ſurrender, or proclamation,
" double damages, and fine and ranſom at diſcretion."

† *Sect.* 6. By 9 Edw. 2. c. 3. " If any lay violent h
4 Comm. 218. " on a clerk, he may be indicted before the king for the p
6 Mod. 172. " broken; and ſued before the biſhop for the ſpiritual offen
2 Inſt. 492, 620.

† *Sect.* 7. By 5 Eliz. c. 4. ſ. 21. "If any ſervant aſſau
" affray his maſter, miſtreſs, or overſeer, he ſhall ſuffer
" priſonment, not exceeding a year, on conviction before
" juſtices of the county, or the chief magiſtrate and two co
" rators of a town.—And if further puniſhment ſhould ap
" neceſſary, the juſtices in ſeſſions, or the head magiſtrate
" four or ſix corporators in a town, may exerciſe their diſc
" on, ſo that the puniſhment extend not to life or limb."

† *Sect.* 8. By 9 Ann. c. 16. " To aſſault and ſtrik
Cro. Cir. 121. " privy counſellor, in the council, or any committee th
" in the execution of his duty, is death."

† *Sect.* 9. By 9 Ann. c. 14. ſ. 8. " To aſſault and
" any other on account of money won by gaming, in the

ner deſcribed, is forfeiture of goods, and two years imprisonment."

† *Sect.* 10. By 6 Geo. 1. c. 23. ſ. 11. "To aſſault another in the ſtreet, with intent to ſpoil their cloathes, is tranſportation." Vide O.B. 3781. No. 261. Cro. Cir. 122.

† *Sect.* 11. By 9 Geo. 1. c. 22. "To aſſault another by wilfully ſhooting at him, is felony without clergy." Ante. p. 225

† *Sect.* 12. By 7 Geo. 2. c. 21. "To aſſault with intent to rob is tranſportation." Ante. p. 148.

† *Sect.* 13. By 12 Geo. 1. c. 24. "To aſſault any maſter woolcomber, or weaver, or other perſon concerned in the woollen manufactory, whereby he ſhall receive any bodily hurt, for not complying with any of the bye laws which are mentioned in the act, or ſhall write or ſend any threatening letter, *&c. &c.* is tranſportation for ſeven year." Ante. p. 239.

CHAPTER THE SIXTY-THIRD.

OF AFFRAYS.

IN treating of Affrays, I ſhall conſider,—Firſt, What ſhall be ſaid to be an affray. Secondly, How far it may be ſuppreſſed by a private perſon. Thirdly, How far by a conſtable. Fourthly, How far by a juſtice of peace. Fifthly, In what manner the ſeveral kinds of affrays may be puniſhed. 4 Comm. 145.

Sect. 1. As to the firſt point, It is ſaid, That the word affray is derived from the *French* word *Effraier*, to terrify, and that in a legal ſenſe it is taken for a publick offence, to the terror of the people. From this definition it ſeems clearly to follow, That there may be an aſſault which will not amount to an affray; as where it happens in a private place, out of the hearing or ſeeing of any, except the parties concerned; in which caſe it cannot be ſaid to be to the terror of the people; and for this cauſe ſuch a private aſſault ſeems not to be inquirable in a court leet, as all affrays certainly are, as being common nuſances. 3 Inſt. 158. Dalt. c. 8. Lamb. 125, 126. 4 H. 6. 10. 8 Ed. 4, 5. Summary 135.

Sect. 2. Alſo it is ſaid, that no quarrelſome or threatening words whatſoever ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who ſhall barely quarrel with angry words, without coming to blows; yet it ſeemeth, That the conſtable may, at the requeſt of the party threat- 23 Ed. 4. 45. Dalt. c. 8. Lamb. Conſtable, 14.

"ened,

ened, carry the perſon, who threatens to beat him, before a ju
tice, in order to find ſureties.

Popham 158.
3 Inſt. 158.
1 Sid. 186.
1 Keb. 694.
Hob. 120, 215.
2 R. Abr. 78.
1 Burr. 316.
Carr & Hankey.

Sect. 3. Alſo it is certain, That it is a very high offen
to challenge another, either by word or letter, to fight a du
or to be the meſſenger of ſuch a challenge, or even barely to e
deavour to provoke another to ſend a challenge, or to fight;
by diſperſing letters to that purpoſe, full of reflections, and in
nuating a deſire to fight, *&c.*

† By 9 Ann. c. 14. ſ. 8. "Whoever ſhall challenge
"provoke to fight any other perſon or perſons whatſoever, up
"account of any money won by gaming, playing, or betting
"any of the games mentioned in the act, ſhall, on conviction
"indictment, or information, forfeit all their goods, chatte
"and perſonal eſtate, and ſuffer impriſonment without bail,
"the county priſon for two years,"

Lamb. 126.
3 Inſt. 160, 76.
2 R. Abr. 78.
Summary 137.

Sect. 4 But granting that no bare words, in the judgm
of law, carry in them ſo much terror as to amount to an affra
yet it ſeems certain, That in ſome caſes there may be an aff
where there is no actual violence; ae where a man arms hi
ſelf with dangerous and unuſual weapons, in ſuch a manner
will naturally cauſe a terror to the people, which is ſaid to h
been always an offence at common law, and is ſtrictly prohibi
by many ſtatutes.

For by 2 Edw. 3. it is enacted, "That no man, great
"ſmall, of what condition ſoever he be, except the king's ſ
"vants, in his preſence, and his miniſters in executing of
"king's precepts, or of their office, and ſuch as be in their co
"pany aſſiſting them, and alſo upon a cry made for arm
"keep the peace, and the ſame in ſuch places where ſuch
"happen, be ſo hardy to come before the king's juſtices,
"other of the king's miniſters doing their office, with force
"arms, nor bring no force in affray of peace, nor to go
"ride armed by night nor by day, in fairs, markets, nor in
"preſence of the juſtices or other miniſters, nor in no part e
"where, upon pain to forfeit their armour to the king,
"their bodies to priſon, at the king's pleaſure. And that
"king's juſtices in their preſence, ſheriffs, and other mini
"in their bailiwicks, lords of franchiſes, and their bailiffs in
"ſame, and mayors and bailiffs of cities and boroughs, wi
"the ſame cities and boroughs, and borough-holders, co
"bles and wardens of the peace within their wards, ſhall h
"power to execute this act: And that the juſtices aſſigned
"their coming down into the country, ſhall have power to
"quire how ſuch officers and lords have exerciſed their of
"in this caſe, and to puniſh them whom they find, that h
"not done that which pertained to their office," and this ſta
is farther enforced by 7 Rich. 2, c. 13. and 20 Rich. 2. c.

Sect. 5. And in the expoſition of it the following points have
n holden: Firſt, That any juſtice of peace, or other perſon, F. N. B. 249.
o is empowered to execute this ſtatute, may proceed thereon,
ner *ex officio*, or by force of a writ out of chancery, formed
on the ſtatute, and that if he find any perſon in arms contrary 3 Inſt. 161.
he form of the ſtatute, he may ſeize the arms, and commit Dalt. c. 22.
offender to priſon; and that he ought alſo to make a record Lamb. 168. &c.
his whole proceeding, and certify the ſame into the chancery, Daliſ. 23.
ere he proceeds by force of the ſaid writ, or into the exche- 2 Bulſt. 330.
er, where he proceeds *ex officio*.

Sect. 6. Secondly, That where a juſtice of peace, *&c.* pro-
eds upon the ſaid writ, he may not only impriſon thoſe whom C. Eliz. 294.
ſhall find offending againſt the ſtatute in his own view, but Con. Lamb. 170.
o thoſe who ſhall be found by an inqueſt taken before him, to
ve offended in ſuch manner in his abſence. And I do not ſee
y he may not do the ſame where he proceeds *ex officio*; for
eing the ſaid writ hath no other foundation but the ſaid ſtatute,
d is the moſt authentick explication thereof, it ſeemeth that the
les therein preſcribed, ſhould be the beſt direction for all pro-
edings upon that ſtatute.

Sect. 7. Thirdly, That the under-ſheriff may execute the ſaid
rit, being directed to the ſheriff, if it name him only, by the C. Eliz. 294.
me of his office, and not by his proper name, and do not ex-
reſsly command him to act in his proper perſon.

Sect. 8. Fourthly, That a man cannot excuſe the wearing ſuch 24 Ed. 3. 33.
rmour in publick, by alledging that ſuch a one threatened him, 21 H. 7. 39.
d that he wears it for the ſafety of his perſon from his aſſault; 3 Inſt. 161.
t it hath been reſolved, That no one ſhall incur the penalty of Con. 2 Roll. 78.
e ſaid ſtatute for aſſembling his neighbours and friends in his own 2 H. 7. 39.
ouſe, againſt thoſe who threaten to do him any violence therein,
ecauſe a man's houſe is as his caſtle.

Sect. 9. Fifthly, That no wearing of arms is within the mean-
g of this ſtatute, unleſs it be accompanied with ſuch circum- 3 Mod. 117.
nces as are apt to terrify the people: from whence it ſeems 2 Bulſt. 330.
early to follow, That perſons of quality are in no danger of
fending againſt this ſtatute by wearing common weapons, or hav-
g their uſual number of attendants with them, for their orna-
ent or defence, in ſuch places, and upon ſuch occaſions, in which
is the common faſhion to make uſe of them, without cauſing
e leaſt ſuſpicion of an intention to commit any act of violence
r diſturbance of the peace. And from the ſame ground it alſo
llows, That perſons armed with privy coats of mail, to the in- Crom. 64.
ent to defend themſelves, againſt their adverſaries, are not with-
the meaning of this ſtatute, becauſe they do nothing *in terrorem*
puli.

Sect. 10. Sixthly, That no perſon is within the intention Pop. 121, 122.
f the ſaid ſtatute, who arms himſelf, to ſuppreſs dangerous
rioters,

rioters, rebels, or enemies, and endeavours to suppress or ſuch diſturbers of the peace or quiet of the realm; for per who ſo arm themſelves, ſeem to be exempted out of the ge words of the ſaid ſtatute, by that part of the exception in the ginning thereof, which ſeems to allow all perſons to arm th ſelves upon a cry made for arms to keep the peace, in ſuch pl where ſuch acts happen.

Lamb. 131. 3 Inſt. 158. Summary 131. 2 Inſt. 52. 22 E. 4. 44. Dalt. c. 8. Lamb. 131. Infra ſ. 17.

Sect. 11. As to the ſecond point, *viz.* How far an affray m be ſuppreſſed by a private perſon, it ſeems agreed, That any who ſees others fighting, may lawfully part them, and alſo them till the heat be over, and then deliver them to the conſta who may carry them before a juſtice of peace, in order to t finding ſureties for the peace: Alſo it is ſaid, That any pri perſon may ſtop thoſe whom he ſhall ſee coming to join ei party; and from hence it ſeems clearly to follow, That if a m receive a hurt from either party in thus endeavouring to prese the peace, he ſhall have his remedy by an action againſt hi alſo upon the ſame ground it ſeems equally reaſonable, Th he unavoidably happen to hurt either party, in thus doing w the law both allows and commends, he may well juſtify it, aſmuch as he is no way in fault; and the damage done to other, was occaſioned by a laudable intention to do him a ki neſs.

3 Inſt. 138. Con. Lamb. 131. Dalt. c. 8.

Sect. 12. However it ſeems clear, That if either party dangerouſly wounded in ſuch an affray, and a ſtander by, deavouring to arreſt the other, be not able to take him with hurting, or even wounding him, yet he is no way liable to puniſhed for the ſame, inaſmuch as he is bound, under pain fine and impriſonment, to arreſt ſuch an offender, and either tain him till it appear whether the party will live or die, or c ry him before a juſtice of peace, by whom he either is to bailed or committed, *&c.*

Lamb. 131. Dalt. c. 8. 3 Inſt. 158. B. F. Imp. 35, 44. Summary 135. 10 H. 7. 20. 2 Inſt. 52.

Sect. 13. As to the third point, *viz.* How far an affray m be ſuppreſſed by a conſtable. It ſeems agreed, That a conſta is not only impowered, as all private perſons are, to part an fray which happens in his preſence, but is alſo bound at his pe to uſe his beſt endeavours to this purpoſe, and not only to do utmoſt himſelf, but alſo to demand the aſſiſtance of others, wh if they refuſe to give him, they are puniſhable with fine and i priſonment.

3 Inſt. 158. Summary 135. Lamb. 132, 133. Dalt. c. 8. 3 H. 7. 10.

Sect. 14. And it is ſaid, That if a conſtable ſee perſ either actually engaged in an affray, as by ſtriking, or offer to ſtrike, or drawing their weapons, *&c.* or upon the ve point of entering upon an affray, as where one ſhall threa to kill, wound, or beat another he may either carry the fender before a juſtice of the peace, to the end that ſuch j tice may compel him to find ſureties for the peace, *&c.*

Lamb. 132, 133. Dalt. c. 1, 8. Summary 136. Dalt. c. 1, 8. B. Surety, 23, 36. C. Eliz. 375. 9 Ed. 4. 26.

y imprison him of his own authority for a reasonable time, Moor 284.
e heat shall be over, and also afterwards detain him till he 3 H. 4. 9.
ch surety by obligation. But it seems, That he has no 22 E. 4. 35.
to imprison such an offender in any other manner, or for 10 Ed. 4. 18.
her purpose; for he cannot justify the committing an af- 5 H. 7. 6.
to gaol till he shall be punished for his offence, And it is Sav. 97, 98.
That he ought not to lay hands on those, who barely con-
with hot words, without any threats of personal hurt, and
ll which he can do in such a case, is to command them un-
in of imprisonment to avoid fighting.

. 15. But he is so far intrusted with a power over all 5 H. 7. 6.
affrays, that though he himself is a sufferer by them, and Summary 136
fore liable to be objected against, as likely to be partial in 1 Roll. 238.
n cause, yet he may suppress them; and therefore, if an 2 Bulst. 329.
t be made upon him, he may not only defend himself, but
mprison the offender, in the same manner as if he were no
party,

. 16. And if an affray be in a house, the constable may 13 Ed. 4. 9.
open the doors to preserve the peace, and if affrayers fly to 7 Ed. 3. 12.
se and he follow with fresh suit, he may break open the Dalt. c. 8, 67.
to take them. Lamb. 133, 134.

. 17. But it is said, That a constable hath no power to C. Eliz. 375.
a man for an affray done out of his own view, without a Owen 105.
ant from a justice of peace, unless a felony were done or Summary 92,
to be done; for it is the proper business of a constable to 136.
rve the peace, not to punish the breach of it; nor does it
w from his having power to compel those to find sureties who
the peace in his presence, that he has the same power over
who break it in his absence, inasmuch as in such case it is
proper to be done by those who may examine the whole cir-
tances of the matter upon oath, which a constable cannot do;
t is said, That he may carry those before a justice of peace, Lamb. 131.
were arrested by such as were present at an affray, and de- Dalt. c. 8.
ed by them into his hands.

. 18. As to the fourth point, *viz.* In what manner an af- Summary 136.
may be suppressed by a justice of peace; there is no doubt, Dalt. c. 8.
that he may and must do all such things to that purpose, which B. F. Imp. 6,
ivate man or constable are either enabled, or required by 12, 33.
law to do. But it is said, That he cannot without a warrant 14 H. 8. 7.
orize the arrest of any person for an affray out of his view; Moor 468.
t seems clear, that in such case he may make his warrant to
g the offender before him, in order to compel him to find
ties for the peace.

. 19. Also it seems, That a justice of peace has a great- See 38 Ed. 3,
power over one who has dangerously wounded another in an 6, 7.
y, than either a private person or a constable; for there does

not

22 Aſſ. 56.
5 Mod. 84.

not ſeem to be any good authority, that theſe have any pow
all to take ſureties of ſuch an offender; but it ſeems certain,
a juſtice of the peace has a diſcretionary power either to co
him, or to bail him, till the year and day be paſt; but it is

Summary 36.
Dalt. c. 8.
Popham 153.

that he ought to be very cautious how he takes bail, if the w
be dangerous; for that if the party die, and the offender e
not, he is in danger of being ſeverely fined, if he ſhall
upon the whole circumſtances of the caſe to have been too fa
able.

Sect. 20. As to the fifth point, *viz.* In what manner the
ral kinds of affrays are to be puniſhed; it ſufficiently
from the foregoing part of this chapter, how ſuch affrays
accompanied with force and arms, are to be dealt with upo
ſtatute of Northampton; and therefore I ſhall only exami
this place, what penalties other affrays are liable unto.

As to which it is to be obſerved, That all affrays in general
puniſhed by fine and impriſonment, the meaſure of which
be regulated by the diſcretion of the judges according to the

Aleyn. 9.

cumſtances of the caſe, which very much vary the nature of
crime, and in ſome caſes make it ſo inconſiderable as ſcarc
deſerve to be taken notice of; and in others make it an offenc
a very heinous nature.

As in the following inſtances: Firſt, In reſpect of the da
rous tendency thereof. Secondly, In reſpect of the perſons ag
whom it is committed. Thirdly, In reſpect of the place wh
in it happens.

Popham 153.
3 Inſt. 158.

Sect. 21. And, Firſt, An affray may receive an aggrava
from the dangerous tendency thereof, as where perſons coolly
deliberately engage in a duel, which cannot but be attended w
the apparent danger of murder, and is not only an open defia

1 Sid. 186.
1 Keb. 694.

of the law, but carries with it a direct contempt of the ju
of the nation, as putting men under a neceſſity of righting the
ſelves; upon which conſiderations, perſons convicted of bar

Moor 563.

ſending a challenge, have been adjudged to pay a fine of
hundred pounds, and to be impriſoned for one month without b
and alſo to make a publick acknowledgement of their offe
and to be bound to their good behaviour.

Sect. 22. Secondly, An affray may receive another agg
vation from the perſons againſt whom it is committed; as wh
the officers of juſtice are violently diſturbed in the due execu
of their office, as by the reſcous of a perſon legally arreſted,
the bare attempt to make ſuch a reſcous; for all the miniſter
the law, are under its more immediate protection.

Sect. 23. Thirdly, An affray may receive a farther agg
vation from the place wherein it is committed, and upon
reſp

ſpect all affrays in the king's court are ſo ſeverely puniſhed, hath been ſhewn already in chapter 21, and upon the ſame count alſo, all affrays in a church, or church-yard, have been ways eſteemed very heinous offences, as being very great dignities to the Divine Majeſty, to whoſe worſhip and ſervice ch places are immediately dedicated. And upon this conſide- ion, all irreverent behaviour in theſe places hath been eſteem- ſo criminal by the makers of our laws, that they have not y ſeverely puniſhed ſuch diſturbances in them which are pu- hable wherever they happen, as all actual affrays, *&c.* but o ſuch, which if they happen elſewhere, are not puniſhable all; as bare quarrelſome words, and even ſuch which would commendable if done in another place; as arreſts by virtue legal proceſs.

12 Co. 101. 1 Keb. 290, 491. 1 Mod. 186.

But, for the better underſtanding hereof, I ſhall conſider e ſeveral ſtatutes made for this purpoſe.

Sect. 24. And firſt, it is enacted by 5 & 6 Edw. 6. c. 4. That if any perſon whatſoever, ſhall by words only quar- rel, chide, or brawl, in any church or church-yard, that hen it ſhall be lawful unto the ordinary of the place where he ſame offence ſhall be done, and proved by two lawful witneſſes, to ſuſpend every perſon ſo offending; that is to ſay, if he be a layman, *ab ingreſſu eccleſiæ*, and if he be a clerk, from the miniſtration of his office, for ſo long time as the ſame ordinary ſhall by his diſcretion think meet and convenient, according to the fault."

Sect. 25. And it is further enacted by the ſaid ſtatute, That if any perſon ſhall ſmite or lay any violent hands upon any other, either in any church or church-yard; that then *ipſo facto*, every perſon ſo offending ſhall be deemed excom- municate, and be excluded from the fellowſhip and com- pany of Chriſt's congregation."

Sect. 26. And it is alſo further enacted by the ſaid ſtatute, That if any perſon ſhall maliciouſly ſtrike any perſon with any weapon in any church or church-yard, or ſhall draw any weapon in any church or church-yard, to the intent to ſtrike another with the ſame weapon; that then every per- ſon ſo offending, and thereof being convicted by verdict of twelve men, or by his own confeſſion, or by two lawful wit- neſſes, before the juſtices of aſſize, juſtices of oyer and termi- ner, or juſtices of peace in their ſeſſions, by force of this act, ſhall be adjudged by the ſame juſtices before whom ſuch per- ſon ſhall be convicted, to have one of his ears cut off, &c. and beſides that every ſuch to be, and ſtand *ipſo facto* excom- municated, as aforeſaid."

Dyer 275. C. Jac. 462. 1 Ven. 146. Lit. 149. Hett. 86. C. Eliz. 919. 1 Burr. 240. 2 Ld. Ray. 850. 10 Mod. 65, 179. 1 Ventris 146. B.R. H. 179. 680, 224. B. Prohib. 14

Sect. 27. And in the expoſition hereof it hath been holden: Firſt, That notwithſtanding the words of the ſtatute be expreſſed, That he who ſmites another in the church, &c. ſhall, *ipſo facto*, be deemed excommunicate; yet there ought either to be a precedent conviction at law, which muſt be tranſmitted to the ordinary, or elſe the excommunication muſt be declared in the ſpiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one ſhall incur the penalty thereof, till he be found guilty upon a lawful trial; alſo it muſt be intended in the conſtruction of this ſtatute, that the excommunication ought to appear judicially, for otherwiſe there could be no abſolution. (1)

C. Jac. 367. C. Car. 467. Noy 171.

Sect. 28. Secondly, That he who ſtrikes another in the church, &c. can no way excuſe himſelf, by ſhewing that the other aſſaulted him.

1 Saund. 13, 14. 1 Sid. 301. 3 Keb. 124. 1 Mod. 168.

Sect. 29. Thirdly, That church-wardens, or perhaps private perſons, who whip boys for playing in the church, or put off the hats of thoſe who obſtinately refuſe to take them themſelves, or gently lay their hands on thoſe who diſturb the performance of any part of divine ſervice, and turn them out of the church, are not within the meaning of the ſtatute.

THIS act contains three diſtinct clauſes levelled againſt three diſtinct offences in churches and church yards. Firſt, Quarrelling, chiding, or brawling by words only. Secondly, Smiting or laying violent hands. Thirdly, Striking with a weapon; or drawing it with an intent to ſtrike. The eccleſiaſtical court is not prohibited from proceeding upon the two firſt clauſes; but upon the third clauſe there muſt be a previous conviction tranſmitted to the ordinary, &c. If they proceed for damages on either clauſe, they ſhall be prohibited. The proceedings of the eccleſiaſtical court and the king's bench being *diverſo intuitu*, the one to puniſh, and the other to amend. 1 Burr. 243. Vide 11 Mod. 20. Cathedral churches and church yards, which belong to them, are within this ſtatute. 1 Leon. 248.

Sect. 30. Alſo it is enacted by 1 Mary, ſeſſ. 2. c. "That if any perſon or perſons, of their own power and authority, ſhall willingly and of purpoſe by open and overt word, fact, act, or deed, maliciouſly or contemptuouſly molest, let, diſturb, vex or trouble, or by any other unlawful ways and means, diſquiet, or miſuſe, any preacher who ſhall be licenſed, allowed, or authorized to preach by the Queen's higneſs, or by any archbiſhop, or biſhop of the realm, or by any other lawful ordinary, or by any of the univerſities of *Oxford* and *Cambridge*, or otherwiſe lawfully authorized or charged, by reaſon of his or their cure, benefice, or other ſpiritual promotion or charge, in any of their or their open ſermon, &c. or if any perſon or perſons ſhall maliciouſly, willingly, or of purpoſe, moleſt, let, diſturb, vex, diſquiet, or otherwiſe trouble any parſon, vicar, [illegible] riſh-prieſt, or curate, or any lawful prieſt, preparing, [illegible] ing, doing, ſinging, miniſtring or celebrating the maſs, or other ſuch divine ſervice, ſacraments, or ſacramentals, [illegible] was moſt commonly frequented and uſed in the laſt year [illegible]

"the reign of the late ſovereign lord king Henry the Eighth, or that at any time hereafter ſhould be allowed, ſet forth, or authorized by the queen's majeſty; or if any perſon or perſons ſhall unlawfully, contemptuouſly, or maliciouſly, of their own power or authority, pull down, deface, ſpoil, or otherwiſe break any altar or altars, or any crucifix, or croſs, in any church, chapel, or church-yard; every ſuch offender and offenders, his or their aiders, procurers or abettors, may be apprehended by any conſtable, or church-warden of the place where ſuch offence ſhall be committed, or by any other officer or perſon then being preſent at the time of the ſaid offence; and being ſo apprehended ſhall be brought before ſome juſtice of peace by whom they ſhall be committed forthwith, and within ſix days the matter ſhall be examined by the ſame, together with ſome other juſtices; and on proof by two witneſſes, or confeſſion, the offender ſhall be committed for three months, and alſo till the next quarter ſeſſions, where, if they repent, they ſhall be diſcharged upon giving ſureties for their good behaviour for a year, and if they do not repent they ſhall be committed till they do." Sacraligeous affrays.

Sect. 31. It hath been reſolved, That the diſturbance of a miniſter in ſaying the preſent common prayer is within this ſtatute; for the expreſs mention of ſuch divine ſervice, as ſhould afterwards be authorized by queen Mary, doth implicitly include ſuch alſo as ſhould be authorized by her ſucceſſors; for ſince the king never dies, a prerogative given generally to one, goes of courſe to others. 2 Jon. 159. Con. Aleyn 50. 2 Bulſt. 51.

Sect. 32. Alſo it is enacted by 1 Will. and Mary, c. 18. § 19. "That if any perſon ſhall willingly and of purpoſe, maliciouſly or contemptuouſly come into any cathedral or pariſh church, chapel, or other congregation permitted by the ſaid act, and diſquiet or diſturb the ſame, or miſuſe any preacher or teacher, ſuch perſons, upon proof before any juſtice of peace, by two or more ſufficient witneſſes, ſhall find two ſureties to be bound by recognizance in the penal ſum of fifty pounds, and on default of ſuch ſureties ſhall be committed to priſon, there to remain till the next general or quarter ſeſſions, and upon conviction of the ſaid offence, at the ſaid general or quarter ſeſſions, ſhall ſuffer the pain and penalty of twenty pounds." Diſturbing a congregation.

CHAPTER THE SIXTY-FOURTH.

Of FORCIBLE ENTRIES and DETAINERS.

Lamb. 135. Dalt. c. 76. Crom. 70.

IT seems that at the common law a man disseised of any lands, or tenements, (if he could not prevail by fair means) might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain, That even at this day, he who is wrongfully dispossessed of his goods, may justify the re-taking of them by force from the wrongdoer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought.

Kellw. 92. Yelv. 172. C. Jac. 236. Sup. c. 60. f. 23. 3 Comm. 4, 5. 1 Inst. 134. Hal. anal. 346.

Sect. 2. But this indulgence of the common law, in suffering persons to regain the lands, they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions; it was thought necessary by many several laws to restrain all persons from the use of such violent methods of doing themselves justice.

17 H. 7. 17. 21 H. 6. 39. F. N. B. 249. B. Force, 5, 11. 29.

Sect. 3. However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force. For howsoever he may be punishable at the king's suit, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation to that manner to right himself. (1)

(1) An indictment will lie at common law for a forcible entry, though generally brought on the acts of Parliament. 3 Burr. 1732. But it must shew upon the face of it sufficient actual force. 3 Burr. 1702. Form of the indictment at common law, &c. vide Crown Circuit. 255.

Sect. 4. Since therefore offences of this nature are made such not by the common law, but by statute; I shall for the better understanding thereof, consider the several statutes relating to this subject.

Sect.

Sect. 5. And firſt, I find it agreed, That by 2 Edw. 3. hich is commonly called the ſtatute of *Northampton*; if there any uſe made of arms to ſtrike a terror into the perſons upon hom a forcible entry is made, any juſtice of peace or other ficer, who is within the purview of that ſtatute, may both ize the arms for the king's uſe, and alſo impriſon the offen- rs, but not reſtore the party injured to his poſſeſſion; but the id ſtatute having been fully ſet forth in the foregoing chapter, I all proceed to thoſe ſtatutes which more directly relate to this atter. 3 Inſt. 161. Crom. 162. Dalt. c. 80.

Sect. 6. And firſt it is enacted by 5 Rich. 2. c. 7. in the llowing words, "And alſo the king defendeth, That none from henceforth make any entry into any lands and tenements, but in caſe where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner. And if any man from hence- forth do to the contrary, and thereof be duly convict, he ſhall be puniſhed by impriſonment of his body, and thereof ran- ſomed at the king's will."

Sect. 7. But this ſtatute being found by experience not ſuffi- ently to have provided againſt the miſchief intended to be re- eſſed by it, inaſmuch as it gave no ſpeedy remedy to the rty injured, againſt the wrong-doer, but left him to the mmon courſe of proceeding by way of indictment or action d made no proviſion at all againſt forcible detainers, it was, ught neceſſary to ſupply theſe defects by other additional ws.

And to this purpoſe it was further enacted by 15 Rich. 2. 2. "That the ſaid ſtatute and all others made againſt for- cibe entries, &c. ſhall be fully executed; and farther, That t all times that ſuch forcible entries ſhall be made, and complaint thereof cometh to the juſtices of peace, or to any of them, that the ſame juſtices or juſtice take ſufficient power of the county, and go to the place where the force is made; and if they find any that hold ſuch place forcibly, after ſuch entry made, they ſhall be taken and put in the next gaol, there to abide convict by the record of the ſame juſtices or juſtice, until they have made fine and ranſom to the king. And that all the people of the county, as well the ſheriff as others, ſhall be attendant upon the ſame juſtices, to go and aſſiſt the ſame juſtices to arreſt ſuch offenders, upon pain of impriſonment, and to make fine to the king: and in the ſame manner it ſhall be done of them that make ſuch forcible entries in benefices or offices of holy church."

Sect. 8. In the expoſition of this ſtatute it hath been hold- , That one juſtice of peace may make a record of ſuch a forcible 8 Co. 121. Dalt. c. 22.

Lamb. 151.

forcible holding, and that ſuch record is not traverſable, because the juſtice of peace in making thereof, acts not as a

(a) B. R. Hill 1708. Salkeld 353. Kellw. 41. 8. Crom. 195, 196. Dalt. c. 22. Moor 848.

miniſter but as a judge. Alſo it hath (a) lately been ſolemnly reſolved in colonel *Leighton's caſe*, That the ſame juſtice may aſſeſs the fine for this offence, either before the time of conviction, or after; but it is ſaid, That ſuch juſtice of peace hath no power to commit the offender to gaol, unleſs he do it immediately upon the fact, or unleſs the offender ſhall afterwards refuſe to find ſureties for his good behaviour. Alſo it was holden by the court in *Leighton's caſe* abovementioned, That if a perſon againſt whom a complaint ſhall be made as having been guilty of a forcible entry, ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction, the juſtice muſt needs have this power as incident to what is expreſly given him.

Salkeld 353. 2 L. Ray. 1514. 2 Strange 794. Bar. K. B. 30, 38, 39. Seſſ. Caſ. 289.

Sect. 9. But this ſtatute being likewiſe very defective in many reſpects, as in not giving any remedy againſt thoſe who were guilty of a forcible detainer after a peaceful entry; nor even againſt thoſe who were guilty of both a forcible entry and a forcible detainer, if they were removed before the coming of the juſtice of peace; and in not giving the juſtices of the peace any power to reſtore the party injured by ſuch force to his poſſeſſion, and alſo in not fixing any pain on the ſheriff for not obeying the precepts of the juſtices in the execution of the ſaid ſtatutes, it was farther enacted by 8 Hen. 6. c. 9. "That from hence-
"forth where any doth make any forcible entry in lands and te-
"nements, or other poſſeſſions, or them hold forcibly, after com-
"plaint thereof made within the ſame county where ſuch entry
"is made, to the juſtices of the peace, or to one of them, by
"the party grieved, that the juſtices or juſtice ſo warned
"within a convenient time, ſhall cauſe, or one of them ſhall
"cauſe, the ſaid ſtatute to be duly executed, and that at the
"coſts of the party ſo grieved."

Sect. 10. And it is further enacted by the ſaid ſtatute,
"That though ſuch perſons making ſuch entries be preſent,
"or elſe departed before the coming of the ſaid juſtices or
"juſtice, notwithſtanding the ſame juſtices or juſtice in ſome
"good town next to the tenements ſo entered, or in ſome
"other convenient place according to their diſcretion, ſhall
"have, and either of them ſhall have, authority and power
"to enquire by the people of the ſame county, as well by
"them that make ſuch forcible entries in lands and te-
"ne-

ments, as of them which the ſame hold with force. And if it be found before any of them, that any doth contrary to this ſtatute, then the ſaid juſtices or juſtice ſhall cauſe to reſeize the lands and tenements ſo entered or holden as afore, and ſhall put the party ſo put out, in full poſſeſſion of the ſame lands and tenements, ſo entered or holden as before."

Sect. 11. And it is farther enacted by the ſaid ſtatute, "That when the ſaid juſtices or juſtice make ſuch enquiries as before, they ſhall make, or one of them ſhall make, their warrants and precepts to be directed to the ſheriff of the ſame county, commanding him of the king's behalf, to cauſe to come before them, and every of them, ſufficient and different perſons, dwelling next about the lands ſo entered as before, to enquire of ſuch entries, whereof every man which ſhall be impanelled to enquire in this behalf, ſhall have land or tenement of the yearly value of forty ſhillings by the year, at the leaſt, above reprizes, and that the ſheriff return iſſues upon every of them at the day of the firſt precept returnable, twenty ſhillings, and at the ſecond day forty ſhillings, and at the third time an hundred ſhillings, and at every day after the double. And if any ſheriff or bailiff within a franchiſe having return of the king's writ, be ſlack, and make not execution duly of the ſaid precepts to him directed to make ſuch enquiries, that he ſhall forfeit to the king twenty pounds for every default, and moreover ſhall make fine and ranſom to the king. And that as well the juſtices or juſtice aforeſaid, as the juſtices of aſſizes ſhall have power to hear and determine ſuch defaults of the ſaid ſheriffs and bailiffs, at the ſuit of the king, or of the party grieved, *&c.*

Sect. 12. And it is farther enacted by the ſaid ſtatute, "That mayors, juſtices or juſtice of peace, ſheriffs and bailiffs of cities, towns and boroughs having franchiſe, have in the ſaid cities, towns and boroughs, like power to remove ſuch entries, and in other articles aforeſaid, riſing within the ſame, as the juſtices of peace, and ſheriffs in counties and countries aforeſaid have."

Sect. 13. But it is provided by the ſaid ſtatute, "That they who keep their poſſeſſions with force in any lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they have in ſuch lands and tenements, have continued their poſſeſſions in the ſame by three years or more, be not endamaged by force of this ſtatute."

Sect. 14. And the ſaid proviſo was farther enforced and explained by 31 Eliz. c. 11, by which it is declared and enacted, "That

"That no reſtitution upon any indictment of forcible entry, or "holding with force, be made to any perſon, if the perſon ſo "indicted, hath had the occupation, or been in quiet poſſeſſion, "for the ſpace of three whole years together, next before the "day of ſuch indictment ſo found, and his eſtate therein not "ended; which the party indicted may alledge for ſtay of reſti- "tution, and reſtitution to ſtay till that be tried, if the other "will deny or traverſe the ſame. And if the ſame allegation "be tried againſt the ſame perſon ſo indicted, he is to pay ſuch "coſts and damages to the other party, as ſhall be aſſeſſed by the "judges or juſtices before whom the ſame ſhall be tried; the "ſame coſts and damages to be recovered and levied, as is uſual "for coſts and damages contained in judgments upon other "actions."

Crom. 161, 166.

Sect. 15. In the conſtruction of theſe ſtatutes it was holden, That if a leſſee for years, or copyholder were ouſted, and the leſſor, or lord, diſeiſed, and ſuch ouſter as well as diſſeiſin were found in an indictment of forcible entry, the court might in their diſcretion award a reſtitution of poſſeſſion to ſuch leſſee or copyholder, which was by neceſſary conſequence a reſeiſin of the freehold alſo, whether the leſſor or lord had deſired or oppoſed it. But it was a great queſtion, Whether a leſſee for years, or a copyholder, being ouſted by the leſſor or lord, could have a reſtitution of their poſſeſſion within the equity of 8 Hen. 6. the words whereof as to this purpoſe are, "that the juſtice ſhall re-ſeiſe the lands &c.' by which it ſeems to be implied. That the party muſt be ouſted of ſuch an eſtate therein, whereof he may be ſaid to be ſeiſed, which muſt be a freehold at leaſt.

Yelv. 81. Con. 1 Leon. 327. Lamb. 155. Crom. 71. Dalt. c. 77. Savil 68. Farres. 123.

Sect. 16. But to remove this doubt, it is enacted by 21 Jac. 1. c. 15. "That ſuch judges, juſtices, or juſtice of the peace "as by reaſon of any act or acts of parliament then in force "were authorized and enabled upon enquiry, to give reſtitution "of poſſeſſion unto tenants of any eſtate of freehold, of their "lands or tenements, which ſhall be entered upon with force, or "from them withholden by force, ſhall by reaſon of that act "have the like, and the ſame authority and ability from thence "forth (upon indictment of ſuch forcible entries, or forcible with- "holding before them duily found) to give like reſtitution of poſ- "ſeſſion unto tenants for term of years, tenants by copy of court "roll, guardians by knights-ſervice, tenants by elegit, ſtatute "merchant and ſtaple, of lands or tenements, by them ſo holden "which ſhall be entered upon by force, or holden from them by "force."

Latch. 182. See Co. Lit. 61.

Sect. 17. But it hath been holden, That a tenant by the verge, is not within this ſtatute, becauſe he is not within the expreſs words; *ſed quære*, for ſince ſuch perſon hath no other evidence

nce of his title, but by the copy of court-roll, he ſeems at to be within the meaning, if not within the words of the e; however it ſeems clear, That if a leſſor eject his leſſee ears, and afterwards be forcibly put out of poſſeſſion again ch leſſee, he hath no remedy for a reſtitution by force, of of the above-mentioned ſtatutes, for he cannot have it by 8 6. becauſe he always continued ſeiſed of the freehold, and ly he is not within 21 Jac. 1. c. 15.

Vide Salk. 587. Crom. 71, 166. Dalt. c. 77.

ct. 18. However there ſeems to be no doubt, but that a juſ- of peace, &c. may, in either of the ſaid caſes, remove the , and commit the offender, &c.

Lamb. 155. Crom. 71. Dalt. c. 75. 2 Keb. 495.

ct. 19. Having thus ſet forth the ſeveral ſtatutes relating to ubject, together with the miſchiefs which occaſioned them, he ſeveral defects of each of them, I ſhall, for the better rſtanding of them all in general, proceed to examine the fol- g particulars. Firſt, What ſhall be eſteemed an entry with- eſe ſtatutes. Secondly, What entry is to be adjudged forcible. dly, What detainer. Fourthly, In reſpect of what kind of ſions one may be guilty of ſuch forcible entry or detainer. ly, What perſons may be guilty thereof. Sixthly, What t to be the form of a record grounded upon theſe ſtatutes. thly, Of what kind of poſſeſſions a reſtitution is to be awarded. thly, To whom ſuch reſtitution ought to be made. Ninthly, hom, and in what manner, it is to be awarded and given. hly, In what caſes it may be barred by the continuance of a ſion for three years. Eleventhly, For what other cauſes it be ſtayed. Twelfthly, How it may be ſuperſed before it is uted. Laſtly, How it may be ſet aſide after it is executed.

Strange 443, 794. Ld. Ray. 1514.

ct. 20. As to the firſt point, *viz.* What ſhall be eſteemed ntry within theſe ſtatutes. It ſeems certain, That if one who nds a title to lands, barely go over them, either with, or out a great number of attendants, armed or unarmed, in his to the church, or market, or for ſuch like purpoſe, without any act, which either expreſly or impliedly amounts to a n of ſuch lands, he cannot be ſaid to make an entry thereinto in the meaning of theſe ſtatutes.

Crom. 70. Dalt. c. 77.

ct. 21. Yet in ſuch caſe, if he makes an actual claim with circumſtances, of force or terror, he ſeems to be guilty of a ble entry within 1 & 1 Rich. 2. whether his adverſary actu- quit his poſſeſſion or not.

Crom. 69. Dalt. c. 77. Con C. Car. 486. 2 Com. Dig. 363.

ct. 22. Alſo all thoſe who accompany a man when he makes rcible entry, ſhall be adjudged to enter with him, within the nt of theſe laws, whether they actually came upon the lands, not.

Crom. 69. Dalt. c. 77. B. 2. c. 29. ſ. 4

Sect.

Crom. 69.
Dalt. c. 77.
Co. Lit. 256.

Sect. 23. So alſo ſhall thoſe who having an eſtate in [illegible] a defeaſible title, continue with force in the poſſeſſion [illegible] after a claim made by one who had a right of entry thereto.

Crom. 69.
Dalt. c. 77.
2 H. 7. 16.

Sect. 24. But he who barely agrees to a forcible entry [illegible] to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way [illegible] curred in, or promoted the force.

Lamb. 140, &c.
Dalt. c. 77.
Co. Lit. 257.
Hale 138.
1 Sid. 101.
1 Lev. 90.

Sect. 25. As to the ſecond point, *viz.* What entry is to be adjudged forcible, it ſeems clear, that it ought to be accompanied with ſome circumſtances of actual violence or terror; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within the ſtatutes.

And therefore for the better underſtanding hereof, I ſhall conſider; Firſt, In reſpect of what acts of violence an entry may be adjudged forcible, Secondly, In reſpect of what circumſtances of terror.

Sum. 116, 138.
2 Roll. 2.
Noy 136, 137.
30 Aſſ. 50.
11 H. 4. 16, 17.
2 Inſt. 235, 236.
Dalt. c. 77.
Cro. 70.
Moor 656.
Lamb. 143.

Sect. 26. As to the firſt of theſe particulars, It ſeems to be agreed, That an entry may be ſaid to be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it at the ſame time or not, eſpecially if it be a dwelling houſe, and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods, *&c.* which being found in an aſſiſe of novel diſſeiſin, will make the defendant a diſſeiſor with force, and ſubject him to fine and impriſonment. And according to ſome opinions, an entry may be ſaid to be forcible by the bare drawing up of a latch, or pulling back the bolt of a door; but ſurely ſuch inconſiderable circumſtances as theſe, which commonly paſs between neighbour and neighbour, without any offence at all, can never bring a man within the meaning of the ſtatutes, which ſpeak of entries with ſtrong hand, or multitude of people; and it hath been holden, That an entry into a houſe through a window, or by opening a door with a key, is not forcible. And it is ſaid, That if one find a man out of his houſe, and forcibly withhold him from returning to it, and ſend perſons to take peaceable poſſeſſion thereof, in the party's abſence, he is not guilty of a forcible entry, inaſmuch, as he did no violence to the houſe, but only to the perſon of the other. But perhaps this opinion may juſtly be queſtioned, becauſe though the force be not actually done upon the land, nor in the very act of the entry, yet ſince it is uſed with an immediate intent to make ſuch entry, and is the only cauſe it met with no oppoſition, ſure

not be ſaid, that the entry is without force, which er it be upon, or off the land, ſeems equally within tute.

27. As to the ſecond particular, *viz.* In reſpect of what ſtances of terror an entry may be adjudged forcible, it is bſerved, That wherever a man either by his behaviour or , at the time of his entry, gives thoſe who are in poſſeſſion tenements which he claims, juſt cauſe to fear, that he will do ome bodily hurt, if they will not give way to him, his is eſteemed forcible, whether he cauſe ſuch a terror, by ng with him ſuch an unuſual number of ſervants, or by g himſelf in ſuch a manner as plainly intimates a deſign to his pretenſions by force, or by actually threatening to kill, , or beat thoſe who ſhall continue in poſſeſſion, or by giving ch ſpeeches as plainly imply a purpoſe of uſing force againſt who ſhall make any reſiſtance, as if one ſay that he will his poſſeſſion in ſpite of all men, *&c.*

Summary 128. Lamb. 142, &c. Dalt, c. 77.

10 H. 7. 12. Crom. 69.

See the books above cited

28. But it ſeemeth that no entry ſhall be judged forci- from any threatening to ſpoil another's goods, or to deſtroy attle, or to do him any other ſuch like damage which is not inal.

B. Dureſs, 12, 16. 1 Inſt. 253. Dalt. c. 77.

29. However it is clear, That it may be committed by le perſon, as well as by twenty.

Lamb. 143.

30. As to the third point, *viz.* What detainer is to be dged forcible, it ſeemeth certain, That the ſame circumſtan- violence or terror which will make an entry forcible, will a detainer forcible alſo; from whence it ſeems to follow, whoever keeps in his houſe an unuſual number of people, nuſual weapons, or threatens to do ſome bodily hurt to the er poſſeſſor, if he dare return, ſhall be adjudged guilty of cible detainer, though no attempt be made to re-enter; and th been ſaid, That he alſo ſhall come under the like con- tion, who places men at a diſtance from the houſe, in order ſault any one who ſhall attempt to make an entry into it; and he alſo is in like manner guilty who ſhuts his doors againſt a e of peace coming to view the force, and obſtinately refuſes t him come in: But it is ſaid, That a man ought not to be dged guilty of this offence, for barely refuſing to go out of a e, and continuing therein in deſpight of another.

Summary 138.

Lamb. 145. Crom. 70, 73. Summary 139. Dalt. c. 77. C. Jac. 199.

31. As to the fourth point, *viz.* In reſpect of what of poſſeſſions one may be guilty of a forcible entry or de- er within thoſe ſtatutes, it ſeems clear, That one may come in the danger thereof by a force done to eccleſiaſtical poſ- ons, as (a) churches, (b) vicarage-houſes, *&c.* as much as if ſame were done to any temporal inheritance; alſo it hath been holden

(a) 1 Sid. 101. 1 Lev. 90. 1 Keb. 438. (b) C. Jac. 41.

holden for a general rule, That one may be indicted for a forcible entry into any ſuch incorporeal hereditament, for which a writ of entry will lie, either by the common law, as for (d) or by ſtatute, as for (e) tithes, &c. But I do not find any authority, That ſuch an indictment will lie for a (f) common (g) office; but it ſeems agreed, That an indictment of forcible detainer lies againſt any one, whether he be the tenant or a ſtranger, who ſhall forcibly diſturb the lawful (h) proprietor in the enjoyment of any of the above-mentioned poſſeſſions by violently reſiſting a lord in his diſtreſs for a rent, or by menacing a commoner with bodily hurt, if he dare put in his beaſts into the common, &c. Yet it ſeems clear, That no one can come within the danger of theſe ſtatutes by a violence offered to another in reſpect of a way, or ſuch like eaſement, which is not poſſeſſion. Alſo it ſeemeth, That a man cannot be convicted upon view, by force of 15 Rich. 2. of a forcible detainer of any freehold tenement, wherein he cannot be ſaid to have made a precedent forcible entry, becauſe that ſtatute gives the juſtices a juriſdiction of no other forcible detainer, but what follows a forcible entry.

(c) C. Car. 201.
(d) 20 H. 6. 11. 22 H. 6. 33. B. Force, 7. C. Car. 201.
(e) C. Car. 201.
(f) C. Car. 486. Dalt. c. 77.
(g) C. Jac. 18.
(h) Crom. 69.
1 Mod. 73. 2 Keb. 709.
Vide Inf. ſ. 42.

Sect. 32. As to the fifth point, *viz.* Who may be guilty of forcible entry or detainer within theſe ſtatutes; it ſeems clear, That no one can come within the intention thereof by any violence whatſoever done by him in entering into a tenement, wherein himſelf had the ſole and lawfull poſſeſſion, both at and before the time of ſuch entry; as by breaking open the door of his own dwelling-houſe, or of a caſtle, which is his own inheritance, but forcibly detained from him by one who claims the bare cuſtody of it; or by forcibly entering into the land in the poſſeſſion of his own leſſee at will. *Sed quære.*

Moor. 786. C. Jac. 18. 2 Keb. 495.

Sect. 33. But it ſeems clear, That a jointenant, or tenant in common, may offend againſt the purport of theſe ſtatutes either by forcibly ejecting, or forcibly holding out his companion; for though the entry of ſuch a tenant be lawful *per my & per tout*, ſo that he cannot in any caſe be puniſhed in an action of treſpaſs at the common law, yet the lawfulneſs of his entry no way excuſes the violence, or leſſens the injury done to his companion, and conſequently an indictment of forcible entry into a moiety of a manor, &c. is good.

8 Ed. 4. 9, 19. 10 H. 7, 27. King & Marrow, 9 Geo. 2. B. R. H. 174.
Latch. 224. Palmer 419.

Sect. 34. Alſo if a man have been in poſſeſſion of land never ſo long a time; by a defeaſible title, and another who hath a right of entry thereunto, make a claim, and yet ſuch wrongful poſſeſſor ſtill continue his occupation with force and arms, he is puniſhable for a forcible entry and detainer againſt the purport of theſe ſtatutes, becauſe all the eſtate whereof he was ſeiſed before ſuch claim, was wholly defeated by

Co. Lit. 256 257. Crom. 69. Lamb. 160, 161. Dalt c. 77.

continuance in his poſſeſſion afterwards amounted in the ent of law to a new entry.

35. It is ſaid, That an infant or feme covert may be within the intention of theſe ſtatutes, in reſpect of ſuch violence as ſhall be done by them in perſon, but not in of what ſhall be done by others at their command, be- ll ſuch commands of theirs are void; Alſo it is ſaid, That covert may be impriſoned for ſuch offence, but that an ought not, becauſe he ſhall not be ſubject to corporal pu- ent, by force of the general words of any ſtatute, wherein not expreſsly named. Dalt. c. 77. Crom. 69. Co. Lit. 357. 1 Hale 21. B. Imp. 43, 45.

36. As to the fifth point, *viz.* What ought to be the a record grounded upon theſe ſtatutes, it hath been re- , Firſt, That it is ſufficient in the caption of ſuch an in- ent, to ſay, that it was taken before *A. B. & C. D. Juſti- ad pacem Domino Regis conſervandam aſſignatis*, without ng that they had authority to hear and determine felonies reſpaſſes; for the ſtatute enables all juſtices of peace, as to take ſuch indictments. Palmer 277. C. Jac. 633.

37. Secondly, It hath alſo been reſolved, That the ent in which the force was committed, muſt be deſcribed convenient certainty, for otherwiſe the defendant will nei- know the ſpecial charge to which he is to make his defence, r will the juſtices or ſheriff know how to reſtore the injur- y to his poſſeſſion; and from hence it follows, That an ment of a forcible entry into a (a) tenement (which may any thing whatſoever,) (b) wherein a man may have an of freehold, or into a houſe (c) or tenement, or into two of meadow (d) or paſture, or into a rood (e) or half a of land, or into (f) certain lands belonging to ſuch a houſe, o ſuch a houſe, without ſhewing in what (g) town it lies, o a (h) tenement with the appurtenances called *Truepenny* is not good. But it hath been reſolved, That an indict- for a forcible entry *in (i) domum manſionalem, ſive meſſua- &c.* is good, for theſe are words equipollent: Alſo ſuch an indictment for an entry into a (k) cloſe, called nt *Hern's* cloſe, *&c.* without adding the number of acres, od, for here is as much certainty as is required in an ment. And it hath been adjudged, that ſuch indict- may be void as to ſuch part thereof only which is un- in, and good for ſo much as is certain, and therefore that dictment for a forcible entry into a houſe, and certain acres nd thereto belonging, may be quaſhed as to the land, and good as to the houſe. Dalt. c. 81. 8 Mod. 66. 12 Mod. 417. (a) Dalt. 15. 2 Roll. 46. 2 R. Abr. 80. 3 Leon. 102. (b) Co. Lit. 6. (c) 2 R. Abr. 40. 1 Roll. 334. C. Jac. 633. Palmer 277. (d) 2 R. Abr. 81. (e) 1 Bulſt. 201. (f) 2 Leon. 186. 3 Leon. 102. B. Forc. Ent. 23. (g) 2 Leon. 186. (h) 2 R. Abr. 80. (i) C. Jac. 633. Palmer 277. (k) C. Eliz. 458. 2 R. Abr. 80. 2 Leon. 186. 3 Leon. 102.

38. Thirdly, It hath been alſo reſolved, That an in- ent on 5 or 15 Rich. 2. needs not ſhew who had the old at the time of the force, becauſe thoſe ſtatutes ſeem equally St. 21. Jac. 1. 2 Keb. 495. 3 Bulſt. 71.

1 Ven. 25. 23. 1 Sid. 102, 306. 21 Mod. 273.

equally to punish all force of this kind, without any regarding what estate the party had on whom it was made it seems, That such an indictment ought to shew that entry was made on the possession of some person, who some estate in the tenements, either as a freeholder or for years, &c. for otherwise it doth not appear, that the try was made injurious to any one. But it is said, That indictment on 8 Hen. 6. must shew, that the place where force was committed was the freehold of the party grieved the time of such force; and therefore, That it is not ent to say that the defendant with strong hand, &c. into such a house, *existens liberum tenementum J. S.* &c. out saying, *adtunc existens liberum tenementum J. S.* for wise it may be intended, that it was his freehold at the of the indictment only, and not at the time of the force according to the general opinion, an indictment on that cannot warrant an award of restitution, unless it find, the party was seised at the time. Yet it is said, That the such an express finding may be supplied by such words necessarily imply, that the party was seised at the time force; as where it is expressly laid that the defendant *J. S.* &c. which is impossible, unless he had been seised freehold at the same time; and it hath been said, That sufficient in such an indictment to say that the party *possessionatus pro termino vitæ*, without using the word &c. for the same propriety of expression is not required dictments as pleadings; *sed quære*. Also it is said, That do appear either in such an express or implicit manner the party injured had the freehold of the land at the the force, it is not necessary to shew farther what particular he had therein, or by what title he claims the for it is not the title, but the possession, which is in And upon the like ground it hath been adjudged, That indictment on the said statute for entering on my farmer, forcibly expelling him, and disseising me, is good, shewing what estate such farmer had; for it is sufficient shew that he had the possession, and the injury complained is the forcible disseisin done to me, which, being the point of the indictment, if it be sufficiently set forth in stance, the indictment is good; yet in this very case the of shewing that such farmer was ousted, would have been incurable fault; because his possession being my possession, less he were ousted, I could not be disseised. Also it been holden, That as an indictment on 8 Hen. 6. must that the party who is put out of possession was seised of a hold, in order to bring him within the purview of that so also an indictment on 21 Jac. 1. c. 15. must shew, the party injured was possessed of such an estate, as will him within the provision of that act; and upon this ground hath been resolved, That such an indictment, setting

1 R. Abr. 80.

Yelv. 165.

Farres 123.

1 Ven. 306.

eral, That the party was poſſeſſed, or that he was poſſeſſed a certain term, without adding, that it was for years, is not d; for in the firſt caſe it may be intended, That he was poſd only by virtue of a leaſe at will; and in the ſecond, That was poſſeſſed of a term for life; in neither of which caſes he within the benefit of 21 Jac. 1. c. 15. Yet it hath been ſaid, t the poſſeſſion of ſuch an eſtate, as is within that ſtatute, ufficiently ſet forth in the reciting part of an indictment, as , *quod cum J. S.* was poſſeſſed for a certain term of years, being ſo poſſeſſed, was by ſtrong hand, &c. put out of poſon, &c. without any direct allegation of ſuch a poſſeſſion.

1 Sid. 102.
1 Mod. 73.
2 Keb. 709.
Salk. 260.
Farres 123.
1 Mod. 73.

ect. 39. Fourthly, it hath been reſolved, That a repugcy in ſetting forth the offence in an indictment upon any of ſe ſtatutes, is an incurable fault; and upon this foundation ath been adjudged, That an indictment on 8 Hen. 6. ſetting th, that the defendants *pacificè intraverunt, &c. & eum adtunc ibidem vi armis diſſeiſiverunt*, or that *J. S.* was ſeiſed and poſed, is void; and ithath alſo been adjudged, That an indictnt on 21 Jac. 1. ſetting forth, That the party injured was ſeſſed of a term for years, or of a copyhold eſtate, and that defendants with ſtrong hand ouſted and diſſeiſed him, is void, auſe it is abſurd and contradictory to ſet forth a diſſeiſin of h an eſtate whereof it is impoſſible that any man can be eiſed; alſo it hath been holden, That an indictment on 8 n. 6. ſetting forth a diſſeiſin of land, *adtunc & adhuc exiſtens rum tenementum J. S.* is void for its repugnancy, inaſmuch as mplies, That *J. S.* always continued in poſſeſſion, which, if be true, makes it impoſſible that he could be diſſeiſed at all; ſome have ſaid that this ſeeming repugnancy may be recond, by intending that the diſſeiſee might re-enter after the e of the diſſeiſin, and before the finding of the indictment; wever it ſeems clear, That if the words *adhuc extratenet* be ded, ſuch a repugnancy cannot be helped by any intendment; d that no reſtitution can be awarded on ſuch an indictment, hether thoſe words *adhuc extratenet* be in it or not, becauſe e party grieved appears by the indictment itſelf to have had freehold at the time of the finding thereof.

Alyn 50.
Show. 272.
1 Vent. 108.
Popham. 205.
Raymond 67.
1 Keb. 423, 428, 435, 472.
2 Roll. 311.
Show. 272.
2 Bulſt. 121.
1 Sid. 102.

ect. 40. Fifthly, It hath been reſolved, That an indictent of a forcible detainer, without ſhewing that the defendnt made an entry into the ſame lands, is not good, becauſe e ſtatute doth not prohibit one who hath always been in poſſion, to maintain the ſame with force. And it ſeems clear, hat a conviction of a forcible detainer upon view by force 15 Rich. 2. cannot be good, unleſs it ſhew that the defendt was alſo guilty of a forcible entry, for the words of at ſtatute are, "That at all times that ſuch forcible entries are made, and complaint thereof cometh to the juſtices,

2 R. Abr. 80.
Palm. 195, 196, 197.
C. Jac. 19, 20, 32.
C. Eliz. 915.

"tices, &c. that the ſame juſtices, &c. ſhall go, &c. and
"they find any that hold ſuch place forcibly, after ſuch en
"made, &c." by which it is plain, That the juſtices have
juriſdiction by force of this ſtatute, but where the entry, as w
B.R. Hill. 1708. as detainer, was forcible? Yet in *Leighton's* caſe it was reſo
ed, That ſuch a forcible entry is ſufficiently ſet forth in
complaint recited in ſuch a conviction; and it is plain, T
the ſtatute could not intend that the forcible entry ſhould
viewed, becauſe it is to precede the proceedings of the ju
ces; but perhaps it is the better opinion, That an indictm
upon 8 Hen. 6. ſetting forth an entry and forcible detai
without ſhewing whether the entry were forcible and peaceab
is good; for there is no *medium* between a forcible and pea
able entry; and an entry not alledged to have been forcib
ſhall be intended to have been peaceable, or if not ſo,
it ſeems to be no way material, whether it ſhall be taken
have been forcible or peaceable, becauſe in either caſe it is equ
ly within the ſtatute, the words whereof as to this purpoſe a
2 R. Abr. 80. "Where any doth make forcible entry in lands and tenem
"or other poſſeſſions, or them hold forcibly;" by which it a
pears, That a forcible detainer is a diſtinct offence from that
Yelv. 99. a forcible entry, and no way depending on it; and my lord ch
C. Jac. 151. juſtice Holt ſeemed to be of this opinion in *Leighton's* caſe abo
1 Sid. 97, 99, 414. mentioned However it ſeems to be certain, That if a bill b
2 Keb. 505. for a forcible entry and forcible detainer be preferred to a gr
Vide inf. ſ. 59. jury, and found *ignoramus* as to the entry with force, and
B. 2. c. 25. ſ. 2. *vera* as to the detainer, it will not warrant an award of reſtitu
(a) Vide Rex. v. Fieldhouſe, Cowper 325. bnt is void, becauſe the grand jury cannot find a bill true
part, (a) and falſe for part, as a petit jury may.
See R. v Tenison 3 Ad & E 817 The subject of
Leighton's case commented on

Sect. 41. Sixthly, It hath been reſolved, That no indi
Salk. 260. ment can warrant an award of reſtitution, unleſs it find t
B. Force, 13. Lamb. 153. Dalt. c. 81. Summary 140. Hard Ca. 174. Savil 68. Strange. 474. the wrong-doer both ouſted the party grieved, and alſo co
nueth his poſſeſſion at the time of the finding of the indictme
for it is a repugnancy to award reſtitution of poſſeſſion to
who never was in poſſeſſion, and it is vain to award it to
who doth not appear to have loſt it.

Sect. 42. Seventhly, It hath been reſolved, that the t
and place of the diſſeiſin are ſufficiently ſet forth in an
dictment, alledging, That the defendant *tali die intravit*,
& ipſum A. B. manu forti diſſeiſivit, without adding the wo
adtunc & ibidem; for inaſmuch as the entry and diſſeiſin
C. Jac. 41, 151. both of them of the ſame nature, and the one of them natur
tends to cauſe the other, it is implied, that they both h
pened at the ſame time; and the forcible entry being
principal offence within the purview of theſe ſtatutes,
the diſſeiſin being only added to ſhew that the party grieved h
a right to a reſtitution, as to which the day of the diſſeiſin is

ay material, it ſeemeth to be over nice to require a preciſe ex- B. 2. c. 23 §88.
neſs in ſetting it forth; neither can it be to any purpoſe to al-
dge that the diſſeiſin was at the ſame place with the entry, ſince
appears from the nature of the thing, that it could not but be
Yet in an indictment of murder, it is perhaps a fatal miſtake,
t expreſly to ſhew the day and place of the ſtroke, as well as of Dyer 68.
e aſſault, becauſe theſe offences are of different kinds, the one
ing only a treſpaſs, and the other a felony, and may well be
tented to have happened at different times and places, and the
ving of the ſtroke being the principal offence, ought to be ſet
rth with the moſt exact certainty.

Sect. 43. Eighthly, It hath been reſolved, That a diſſeiſin Sayer 225.
ſufficiently ſet forth, by alledging, That the defendant ente- (a) Noy 125.
d, *&c.* into ſuch a tenement and diſſeiſed the party, without (b) C. Jac. 32.
ding, either the words (a) *illicité*, or (b) *expulit*, (c) *inde*, for (c) C. Eliz. 86.
e word *diſſeiſivit* implies as much. Con. Noy 120.

Sect. 44. Ninthly, It has been reſolved, That an indictment 11 Mod. 235.
ich purſues the words of the ſtatute in alledging an entry, C. Eliz. 461.
. to have been made *manu forti*, needs not expreſly alſo to Latch. 224.
, That it was made *vi et armis*, becauſe that is implied. 2 Bulſ. 258.
ſo it is ſaid, That as the want of thoſe words will not vitiate B. 2. c. 25. §. 92.
indictment, which purſues the ſtatute, ſo neither will the uſing Con. 1 Keb. 572.
them make good an indictment which does not purſue it; yet 2 Keb. 133, 135
hath been reſolved, That ſuch an indictment may be good 1 Vent. 265.
thout mentioning any complaint, though the ſtatute ſeems to 3 Burr. 1732.
uire it; for it is ſaid, That theſe words in the ſtatute are put 3 Burr. 1699.
cauſa abundanti; and that if a juſtice of peace have by any
ans whatſoever notice of a forcible entry or detainer, he may
d ought to proceed againſt the ſame according to the ſaid ſta- 7 Ed. 4. 18.
e, as being a diſturbance of the public peace, the preſervation Dalt. 25.
ereof was the chief end of theſe ſtatutes.

Sect. 45. As to the ſeventh point, *viz.* Of what kind of
ſeſſions a reſtitution is to be awarded; it ſeems that it ought Dalt. c. 81.
y to be awarded for the poſſeſſion of ſuch tenements as Lamb. 153.
viſible and corporeal; for no one who hath a right to ſuch
are inviſible and incorporeal, as rents, commons, &c. can
put out of poſſeſſion thereof, but only at his own election,
a fiction of law, in order to enable him to recover da-
ges againſt the perſon who hath wrongfully diſturbed him Co. Lit. 323.
the enjoyment of them; for ſuch things being mere crea-
es of the law, and depending entirely upon the conſtruction
reof, are always in the poſſeſſion of thoſe whom the law ad-
ges to have a right to ſuch poſſeſſion, and conſequently all
remedy that can be deſired againſt a force offered to a

man in respect of such like possessions, is to have the actual fo
removed, and the offenders punished for the same, which
be done by the force of 15 Rich. 2. &c.

Sect. 46. As to the eighth point, *viz.* To whom such
stitution ought to be made; it hath been holden, That it
only be given to him who is found by the indictment to
Dalt. c. 83. Lamb. 153. been put out of an actual possession, and consequently that it
not be awarded to one who was only seised in law, as to an
upon whom a stranger abateth upon the death of the ance
Lamb. 154. Dalt. c. 83. VideC. Jac. 199. before any actual entry made by such heir; and from the
ground it followeth, That it shall not be granted to an heir
an indictment, finding a forcible entry made upon his ancestor.

Sect. 47. It hath been holden by some, That if a disseisee
enter peaceably upon the disseisor, and continue for some
Crom. 162, 163. peaceably upon the tenements in dispute, and afterwards de
them with force, the disseisor shall not be restored upon a
dictment finding the said force, because his possession was at
peaceably defeated, and at the time of the force, he had, in
judgment of law, no possession at all. But I cannot be perst
that this opinion is agreeable to the intention of the said sta
the principal end whereof seems to be to oblige all persons to
fer themselves to the courts of justice, for the decision of
claims to the possession of land, and to restrain them from dis
ing the public peace, by such endeavours to right themselves;
if such a practice as this should be allowed, it would be ea
evade the effect thereof by restraining from violence at first,
then forcing the party to leave the possession of the premisses
a short continuance thereon in peace; neither do I see any
ference between such a continuance for the space of three
and a continuance for three hours or minutes, inasmuch as
subsequent force is in each case equally within the mischief i
ded to be provided against by the statutes; and seeing the sta
of 8 Hen. 6. and 31. Eliz. c. 11. have expressly provided,
those who have been in possession for three years, shall not be
out of possession by an indictment of forcible entry or deta
it seems plainly to be implied, That no one shall have the
advantage, in respect of a possession for a shorter time.

Sect. 48. It will be needless in this place to shew of
kind of hereditaments, or of what kind of estate therein,
party who is to be restored must be found to have been
or possessed, because this may sufficiently appear by what
been said in the foregoing part of this chapter.

Sect. 49. As to the ninth point, *viz.* By whom a
omyns 61. what manner such restitution may be awarded and g
there is no doubt, but that the same justice, before who
indict

ictment of forcible entry or detainer ſhall be found, may grant award of reſtitution to the party; and it is ſaid, That he may cute the ſame either in his own proper perſon, or make his cept to the ſheriff to do it. Dalt. c. 82. Dyer 187. 12 Mod. 495.

ct. 50. But it ſeems clear, That neither juſtices of peace, any other court whatſoever, have authority to grant a reſtitu- upon a conviction of any force taken by them upon view, eſs the ſame be found by an indictment, according to the di- ion of 8 Hen. 6. c. 9. or 21 Jac. 1. c. 15. (2) Alſo it ſeems e agreed, That no other juſtices of peace, except thoſe before om ſuch an indictment ſhall be found, have any power, ei- r at ſeſſions, or out of it, to make any award of reſtitution; that no other court whatſoever can perſonally reſtore the y without a precept to the ſheriff. 1 Sid. 156. 1 Keb. 88. 1 Ven. 308. Dyer 187. Dalt. c. 82. Lamb. 184. (2) Vide 3 Com. Dig. 366. where it is ſaid that a juſtice of peace or ſheriff may break open a houſe to make reſtitution.

ct. 51. Alſo it hath been reſolved, that juſtices of oyer terminer have no power, either to enquire of a forcible en- or detainer, or to award reſtitution on any ſuch indictment; uſe when a new power is created by ſtatute, and certain ces are aſſigned to execute it, it cannot regularly be executed ny other; and inaſmuch as juſtices of oyer and terminer have mmiſſion entirely diſtinct from that of juſtices of peace, they l not from the general words of their commiſſion, *Ad inqui- de omnibus tranſgr' & de omnibus aliis articulis & cauſis cont' am quorumcunque ſtatutorum fact' ſive perpetrat'*, be conſtrued ve any ſuch powers as are ſpecially limited to juſtices of peace. Kell. 159. Daliſ. 25. 9 Co. 118. 11 Co. 65.

it hath been reſolved, That the juſtices of the King's Bench award reſtitution upon an indictment of forcible entry or iner removed before them, becauſe the ſaid juſtices having preme and ſovereign juriſdiction over all matters of a crimi- and publick nature, have always been eſteemed to have pow- all cauſes of this nature, being brought judicially before , to give the parties ſuch remedies in relation thereto, as ſhall appear to have a right to demand, either by common , or by ſtatute. Farres 138. 7 Ed. 4. 18. 4 H. 7. 18. Dalt. c. 82.

ct. 52. The ſheriff, if need be, may raiſe the power of county to aſſiſt him in the execution of a precept of reſtitution, therefore, if he make a return thereto, that he could not e a reſtitution by reaſon of reſiſtance, he ſhall be amerced. Lamb. 157. Dalt. c. 82.

ct. 53. As to the tenth point, *viz.* How ſuch reſtitu- ſhould be barred by the continuance of a poſſeſſion for years; it appears from the above-mentioned proviſo of en. 6. and alſo by 31 Eliz. c. 11. That any one indicted theſe ſtatutes, may alledge ſuch poſſeſſion to ſtay the rd of reſtitution; in the conſtruction whereof it hath been den, That ſuch poſſeſſion muſt have continued without in- Salkeld 260. Carthw. 496. 12 Mod 268. Farres 138. Dalt. c. 79. Crompton 71. Summary 139. Dyer 141. 22 H. 6. 18.

B. Force, 22, 29. 1 Inſt. 256. Raymond 85. 1 Sid. 149.

terruption during three whole years next before the indict and thereof that he who having been in poſſeſſion of land for t years or more, is forcibly ouſted, and then reſtored by forc the ſtatute of 8 Hen. 6. cannot juſtify a forcible detainer, t have been in poſſeſſion again for three years after ſuch reſtitu and alſo for the ſame reaſon it hath been ſaid, That he who a defeaſible title hath been never ſo long in poſſeſſion of la which another hath a right of entry, cannot juſtify ſuch a de er at any time within three years after a claim made by him hath ſuch a right, becauſe all defeaſible eſtates in the land wholly defeated by ſuch a claim, and the ſubſequent con ance in poſſeſſion amounted to a new entry.

Daſt. c 79. 22 H. 6. 18. Crompton 71.

Sect. 54. There have been ſome opinions, That the years poſſeſſion muſt be of a lawful eſtate, and conſequently a diſſeiſor's continuance in quiet poſſeſſion for never ſo years, ſhall not juſtify a forcible detainer; but it ſeems nece to make a diſtinction between a detainer againſt him who h right of entry, and a detainer againſt a ſtranger, or one wh his laches has loſt his right of entry; for I do not ſee why years continuance of a defeaſible poſſeſſion ſhould not juſtify tainer by force againſt a ſtranger, inaſmuch as he cannot tak vantage of another's right, and bare poſſeſſion is a good againſt all perſons, except him who hath the right, and c be lawfully defeated by any other. Alſo if one who h mere right to lands, have ſo long neglected to recover the ſeſſion thereof, till in judgment of law he hath no more ri ſuch poſſeſſion, till he have recovered it by action, than a ſtranger, there doth not ſeem to be any reaſon that he h have more advantage againſt a forcible detainer, than if he a mere ſtranger.

Holding over by force, where the tenants title was under a leaſe then expired, is ſaid to be a forcible detainer. Cro. Jac. 199.

4 Comm. 149.

Sect. 55. Alſo it hath been holden, That a peaceable tinuance in poſſeſſion for three years after a forcible entry, any title whatſoever, will not juſtify a forcible detainer, much as the poſſeſſion was at firſt gained by force. But I e think this a reaſonable conſtruction of the ſaid ſtatutes, f force in the detainer being after three years quiet poſſeſſion, juſtifiable by the expreſs words of the ſtatute; and whe force uſed in gaining a poſſeſſion is afterwards wholly laid there ſeems to be no colour to ſay, That it makes the ſubſe poſſeſſion leſs quiet or peaceable than it would have been, if had been no force at all uſed at the firſt.

1 Keb. 538. K. v. Burges. Salkeld 261.

Sect. 56. It ſeems clear from the expreſs purview o ſaid ſtatute of 31 Eliz. c. 11. That wherever the defe pleadeth ſuch a poſſeſſion in bar of reſtitution upon ſuch dictment, either before the juſtices of peace, or in the bench, no reſtitution ought to be awarded till the truth

a be tried; and it hath been holden, That the plea of ſuch poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was, becauſe it is not the title, but the poſſeſſion only, which is material in this caſe. 1 Sid. 149. Raym. 84. 1 Ven. 265.

Sect. 57. It ſeems that from the wording of 31 Eliz. c. 11. one who has been in poſſeſſion for three years, be ouſted, and the ſame day re-enter with force, and alſo be indicted for ſuch entry on the very ſame day, it may be queſtioned whether the proſecutor ought to have reſtitution, inaſmuch as the words of the ſtatute are, "That there ſhall be no reſtitution, *&c.* if the perſon indicted have been in quiet poſſeſſion for three years next before the day of the indictment found;" and here the defendant hath been in poſſeſſion three years before the day of the indictment, though not three years before the indictment, inaſmuch, as he was ouſted the ſame day. But if it be conſidered, That the circumſtance of finding the indictment on that day in no way affects the merits of the caſe, or leſſens the offence any more than if it were found in any other day; and that reſtitution muſt have been awarded if it had been found on another day; and that the miſchief complained of in the preamble is, that perſons were by colour of ſuch indictments often turned out of their poſſeſſions which they had quietly enjoyed for three years next before ſuch indictments found, which does not extend to the defendant in the preſent caſe, I rather incline to think, that reſtitution ought be awarded to the proſecutor in this caſe, inaſmuch as it clearly appears, That the defendant's poſſeſſion hath not had three years uninterrupted continuance within the intent of the ſtatute. 4 Comm. 148. 1 Burr. 119.

Sect. 58. As to the eleventh point, *viz.* For what other cauſe ſuch reſtitution may be ſtayed; it ſeemeth to be ſettled at this day, That if the defendant tender a traverſe of the force, which muſt be done in writing, and not by a bare denial of the force by parol, the juſtice ought not to make any reſtitution, till the traverſe be tried; in order whereunto he muſt award a *venire facias*, whereon a jury muſt be returned, on whoſe verdict the award of reſtitution ought to depend. 1 Keb. 343. 2 Keb. 49, 571. 1 Sid. 284. Salk. 587, 588. Caſes, tempus Hardwicke, p. 175.

Sect. 59. It hath been reſolved, That if ſuch a jury find part of the indictment to be true, and part of it to be falſe; but if they find ſo much thereof to be true as will warrant a reſtitution, the juſtice ought to reſtore the party: as where, on an indictment of forcible entry and forcible detainer, the jury find that the entry was peaceful, and the detainer was only forcible. 1 Sid. 97, 99. 1 Keb. 427.

Sect. 60. As the juſtice is bound to ſtay the award of reſtitution, upon the defendant's tendering a traverſe of the force, ſo it hath alſo been ſaid, That he ought not to make ſuch an award in any caſe in the defendant's abſence, without calling him to anſwer for himſelf; for it is implied by natural juſtice, in the Savil 68. Aleyn 78.

Jac. 827

the construction of all laws, That no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself.

Dyer 187. Summary 140. Crom. 165. Dalt. c. 81, 84.

Sect. 61. As to the twelfth point, *viz.* How such a restitution may be superseded before it is executed; there is no doubt but that the same justices, by whom a restitution is awarded upon an indictment of forcible entry or detainer found before them, may also afterwards, upon an insufficiency of the indictment appearing unto them, supersede the same before it is executed. And it hath also been said, That if such an indictment be taken and restitution awarded by four or five justices, that two or even one of the same justices may supersede the execution thereof as well as more or all of them. But it seems to be agreed That no other justices, or other court whatsoever, have such power, except the King's Bench.

Cro. Eliz. 915. Yelv. 32.

C. Eliz. 915. Yelv. 32. Moor. 677. 1 Keb. 93. Summary 141. Strange 474.

Sect. 62. However it is certain, that a *certiorari* from the King's Bench is a *supersedeas* to such restitution; for every such *certiorari* has these words *coram nobis terminari volumus & alibi* and consequently it wholly closes the hands of the justices of peace, and avoids any restitution which is executed after the *date*, but does not bring the justices of the peace, *&c.* into a contempt, unless they proceed after the delivering thereof.

Sayer 176.

Sect. 63. As to the thirteenth point, *viz.* How such restitution may be set aside after it is executed; it is certain, That the justices of the King's Bench, having a general superintendent power over all the proceedings whatsoever of justices of peace, may set aside any such restitution, if it shall appear to them to have been either awarded or executed against law; as when the indictment whereon it was grounded, being removed before them, appears to be insufficient, and thereupon is quashed; or the defendant traverses the force and gets a verdict in the King's Bench, or wherever it sufficiently appears that the justices of peace have been irregular in their proceedings, as by refusing to try a traverse of force tendered by the defendant, *&c.*

Savil 68. Sum. 140, 141. C. Eliz. 31. Sup. f. 58.

Noy 119. Yelv. 99. C. Jac. 148, 149.

Sect. 64. Yet if an indictment on these statutes be removed into the King's Bench, and the defendant having been turned out of possession by the grant of restitution to the prosecutor by the justices of peace traverse the force in the King's Bench, and then the offence be pardoned by a general pardon, the court cannot proceed on the trial, notwithstanding the defendant would have the benefit of the pardon, because it appears judicially, That the king can have no benefit of a fine from the defendant if the verdict pass against him, and the court will never falsify an indictment; which is four

B. 2. c. 37. f. 61.

the oaths of twelve men, by bare affidavits; and conſequent-
in this caſe the defendant can have no remedy to ſet aſide the
ſtitution by controverting the truth of the indictment.

Sect. 65. Neither can a defendant in any caſe whatſoever, *rigore juris*, demand a reſtitution, either upon the quaſhing the indictment, or a verdict for him on a traverſe thereof, &c. the power of granting a reſtitution is veſted in the King's nch, only by an equitable conſtruction of the general words the ſtatutes, and is not expreſly given by thoſe ſtatutes; and never made uſe of by that court, but when upon conſidera- n of the whole circumſtances of the caſe, the defendant ſhall pear to have ſome right to the tenements, the poſſeſſion where- he loſt by the reſtitution granted to the proſecutor.

Raymond 85. 1 Keb. 343, 808. 2 Keb. 505. Summary 141. C. Eliz. 916. Salk. 587. Dyer 123. 2 Keb. 571. Savil 68.

Sect. 66. The court of King's Bench hath been ſo favourable one, who, upon his traverſe of an indictment upon theſe ſta- tutes being found for him, hath appeared to have been unjuſt- put out of his poſſeſſion, that they have awarded him a re-reſ- ution, notwithſtanding it hath been ſhewn to the court, that ce the reſtitution granted upon the indictment, a ſtranger hath covered the poſſeſſion of the ſame land in the lord's court.

C. Eliz. 41.

For the form of the indictment vide 2 Burn's juſtice 220.

CHAPTER THE SIXTY-FIFTH.

OF RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

IN treating of riots, routs, and unlawful aſſemblies, I ſhall conſider, Firſt, what ſhall be called a riot, rout, or unlaw- l aſſembly. Secondly, How they may be ſuppreſſed and pu- iſhed by the common law. Thirdly, How by ſtatute.

12 Mod. 510.

Sect. 1. A RIOT ſeems to be a tumultuous diſturbance of e peace, by three perſons, (a) or more aſſembling together of eir own authority, with an intent mutually to aſſiſt one ano- her, againſt any who ſhall oppoſe them, in the execution of me enterprize of a private nature, and afterwards actually xecuting the ſame in a violent and turbulent manner, to the error of the people, whether the act intended were of itſelf law- l or unlawful. (b)

(a) Vide 1 Ven. 251. Salk. 594, 595. Dalt. c. 85, 86, 87. Crom. 61, &c. Pulton 25, &c. 3 Inſt. 176. Summary 137. 3 Mod. 141.

(b) See Salk. 594. Popham 202. 1 Ld. Ray. 484. 12 Mod. 262, 96. 11 Mod. 115, 116, 117. 1 Black. 350. 509. Strange

For

For the better understanding whereof, I shall consider the following particulars;—First, How far such an assembly may become riotous through the want of legal authority expressed or implied, or be excusable by reason of such authority.—Secondly, How far the intention with which the parties assemble together must be unlawful.—Thirdly, With what kind of violence or terror the intended enterprize must be executed.—Fourthly, How far the grievance intended to be redressed must be of a private nature.—Fifthly, Whether the unlawful execution of an act in its own nature lawful may not make an assembly riotous.

(1) The words "more than three persons," are three times over (s. 2. 5. 7.) inserted instead of "three persons or more," an instance, that in a variety of matter it is impossible for the mind of man to be always equally attentive. 4 Burn. 88.

Sect. 2. As to the first point it seems, That wherever more than three persons (1) use force and violence, in the execution of any design whatever wherein the law does not allow the use of such force, all who are concerned therein are rioters. (a) But in some cases wherein the law authorizes force, it is not only lawful, but also commendable to make use of it; as for a (a) sheriff, (b) constable, or perhaps even for a private (c) person, to assemble a competent number of people in order with force to suppress rebels, or enemies, or rioters, and afterwards with such force actually to suppress them; or for a justice of peace, who has a just cause to fear a violent resistance, to raise the *posse*, in order to remove a force in making an entry into, or detaining lands. Also it seems to be the duty of a (d) sheriff, or other minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet it is said not (e) to be lawful for them to raise force for the execution of a civil process, unless they find a resistance; and it is certain, That they are highly punishable for using any needless outrage, or violence therein.

(a) Burr. 1262. K. v. Scott and Harris. 1 Black 350. (a) 2 And 67. Popham 121. (b) 3 H. 7. 10. (c) Pop. 121. Moor 656. Infra c. 47. s. 8. (d) 2 Inst. 193. (e) 3 Inst. 161. 2 Inst. 193. Hob 62, 264.

Lamb. 179, &c. Dalt. c. 86. Crom 61, 62. 6 Mod. 43. Skinner 118. Salkeld 595.

Sect. 3. As to the second point, viz. How far the intention with which such persons assemble together must be unlawful; it seems agreed, That if a number of persons being met together at a fair or market, or church-ale, or any other lawful or innocent occasion happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of sudden affray only, of which none are guilty but those who actually engage in it, Because the design of their meeting was innocent and lawful, and the subsequent breach of the peace, happened unexpectedly without any previous intention concerning it. Yet it is said, That if persons, innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties with promises of mutual assistance, and then make an affray they are guilty of a riot, because upon their confederacy together with an intention to break the peace, they may

proper

perly be ſaid to be aſſembled together for that purpoſe from time of ſuch confederacy, as if their firſt coming together been of ſuch a deſign: However it ſeems clear, That if in aſſembly of perſons met together on any lawful occaſion whatever, a ſudden propoſal ſhould be ſtarted of going together in body to pull down a houſe or incloſure, or to do any other act violence to the diſturbance of the public peace, and ſuch motion be agreed to and executed accordingly, the perſons conned cannot but be rioters, becauſe their aſſociating themſelves gether for ſuch a new purpoſe, is no way extenuated by their ving met at firſt upon another. Alſo it ſeems to be certain, Vide Rex. v. hat if a perſon ſeeing others actually engaged in a riot, do join John Royce, mſelf unto them, and aſſiſt them therein, he is as much a ri- Burrow 2073. er as if he had at firſt aſſembled with them for the ſame purſe, inaſmuch as he has no pretence that he came innocently o the company, but appears to have joined himſelf unto them, ith an intention to ſecond them in the execution of their unlaw- enterprize; and it would be endleſs, as well as ſuperfluous, 6 Modern 43. examine whether every particular perſon engaged in a riot, ere in truth one of the firſt aſſembly, or actually had a previous owledge of the deſign thereof.

Sect. 4. As to the third point, *viz.* With what kind of vio- Dalt. c. 85. nce or terror, the intended enterprize muſt be executed, it Lamb. 175, th been holden, That it ought to be accompanied with ſome 2 Inſt. 176. ter of violence, either to the perſon of a man or to his poſſions, as by beating him, or forcing him to quit the poſſeſſion his lands or goods, *&c.* And from hence it ſeems to follow, hat perſons riding together on the road with unuſual weapons, otherwiſe aſſembling together in ſuch a manner as is apt to ife a terror in the people, without any offer of violence to any e in reſpect either of his perſon or poſſeſſions, are not properguilty of a riot, but only of an unlawful aſſembly.

Sect. 5. However, it ſeems to be clearly agreed, That in very riot there muſt be ſome ſuch circumſtances either of ctual force or violence, or at leaſt of an apparent tendency ereto, as are naturally apt to ſtrike a terror into the people; (a) Lamb. 178. the ſhew (a) of armour, threatening ſpeeches, or turbulent Dalt. c. 871. eſtures; for every ſuch offence muſt be laid to be done *in ter-* 3 H. 7. 1. *rem populi*: (2) And from hence it clearly follows, That aſſem- 6 Mod. 141. 2 Keb. 558. blies at wakes, or other feſtival times, or meetings for exer- Con. 1. Rolle ife of common ſports or diverſions, as bull-baiting, wreſt- 109. ng, and ſuch like, are not riotous. And from the ſame 3 Burr. 1263. round alſo it ſeems to follow, That it is poſſible for more 11 Mod. 116. an three perſons (3) to aſſemble together, with an intention Lamb. 179.

(2) Vide the opinion of Holt, C. J. in the caſe of the Queen v. Soley, 11 Modern 115.

(3) It ſhould be "three perſons or more," vide note (1) to ſection 2.

to

Pulton 25.
3 Keb. 578.
Hobart 91.

to execute a wrongful act, and also actually to perform their
tended enterprize, without being rioters; as if a compet
number of people assemble together in order to carry off a pi
of timber to which one of the company hath a pretended ri
and afterwards do carry it away without any threatening wor
or other circumstances of terror. And from the same ground

Lambard 178.
Crompton 62.
Quære.

seems also to follow, That persons assembled together in a pea
ful manner to do a thing prohibited by statute, as to celeb
mass, *&c.* and afterwards peacefully performing the thing
tended, cannot be said to be rioters; for there seems to be

6 Mod. 141.
2 Keb. 558.
Con. 1 Mod. 13.
1 Ven. 369, 380.
11 Modern 116.

reason why an assembly should become riotous barely for doi
a thing contrary to statute, any more than for doing a thing co
trary to common law.

Sect. 6. As to the fourth point, *viz.* How far the griev
intended to be redressed must be of a private nature; it see
agreed, That the injury or grievance complained of, and
tended to be revenged or remedied by such an assembly, m
relate to some private quarrel only; as the inclosing of lands
which the inhabitants of a town claim a right of common, or ga
ing the possession of tenements, the title whereof is in dispute,
such like matters relating to the interests or disputes of particu
persons, no way concerning the publick; for wherever the i
tention of such an assembly is to redress grievances, as to p
down all inclosures in general, or to reform religion, or to r
move evil counsellors from the king, &c, if they attempt wi
force to execute such their intentions, they are in the eye of t
law guilty of levying war against the king, and consequently
high treason, as appears from chapter seventeen, section twen
five.

Quære and vide Salk. 594, 595. Crom. 64, 66. Dalton c. 87.

Sect. 7. As to the fifth point, *viz.* Whether the execution
an act in its own nature lawful, may make an assembly riotou
it hath been generally holden, That it is no way material whet
the act intended to be done by such an assembly, be of itself la
ful or unlawful; from whence it follows, That if more th
three persons (4) assist a man to make a forcible entry into lan
to which one of them has a good right of entry, or if the li
number in a violent and tumultuous manner join together in r
moving a nusance, which may lawfully be done in a peace
manner, they are as properly rioters, as if the act intended to

(4) It should be "three persons or more," vide sect. 2.

3 Modern 3.
11 Mod. 117.
2 Show. 236.
12 Mod. 648.

done by them were never so unlawful; for the law will not s
fer persons to seek redress of their private grievances, by su
dangerous disturbances of the publick peace: However the ju
tice of the quarrel in which such an assembly doth engage,
certainly a great mitigation of the offence.

Sect. 8. A ROUT seems to be according to the ge
ral opinion, a disturbance of the peace by persons assembl
together with an intention to do a thing, which if it be exec
t

will make them rioters, and actually making a motion to- Lamb. 175, 176.
s the execution thereof: But by ſome books, the notion of Crom. 61.
t is confined to ſuch aſſemblies only, as are occaſioned by Dalt. c. 85.
grievance common to all the company; as the incloſure of B. Riots, 4, 5.
in which they all claim a right of common, &c. However Pulton 25.
much as it generally agrees with a riot as to all the reſt of the
e-mentioned particulars, requiſite to conſtitute a riot, which
been already fully explained, except only in this, That it
be a compleat offence without the execution of the intended
prize, it ſeems not to require any farther explication.

Sect. 9. An unlawful Assembly, according to the
mon opinion, is a diſturbance of the peace by perſons barely
mbling together, with an intention to do a thing, which if
ere executed would make them rioters, but neither actually Crompton 61.
uring it, nor making a motion toward the execution of it. B. Riots, 4.
this ſeems to be much too narrow a definition. For any Pulton 25.
ing whatſoever of great numbers of people with ſuch cir- Dalt. c. 95.
ſtances of terror, as cannot but endanger the publick peace,
raiſe fears and jealouſies among the king's ſubjects, ſeems
erly to be called an unlawful aſſembly; as where great num-
, complaining of a common grievance, meet together, armed Hobart 92.
warlike manner in order to conſult together concerning the Salk. 594, 595.
proper means for the recovery of their intereſts; for no one 1 Ven. 369, 380.
foreſee what may be the event of ſuch an aſſembly.

Sect. 10. Alſo an aſſembly of a man's friends for the defence
his perſon, againſt thoſe who threaten to beat him, if he go 21 H. 7. 39.
uch a market, &c. is unlawful, for he who is in fear of ſuch Lamb. 179, 180.
lts, muſt provide for his ſafety by demanding the ſurety of Summary 137.
peace againſt the perſons by whom he is threatened, and not Crom. 64.
e uſe of ſuch violent methods, which cannot but be attended B. Riots. 1.
h the danger of raiſing tumults and diſorders to the diſturbance 5 Co. 91.
he public peace. Yet an aſſembly of a man's friends in his 11 Mod. 116.
houſe, for the defence of the poſſeſſion thereof, againſt
ſe who threaten to make an unlawful entry thereinto, or for
defence of his perſon againſt thoſe who threaten to beat him
rein, is indulged by law; for a man's houſe is looked upon as
caſtle.

Sect. 11. As to the ſecond point, *viz.* How far offences of
nature may be ſuppreſſed and puniſhed by the common law; Popham 121.
eems clear, That every ſheriff, under ſheriff, and alſo every 3 H. 7. 1. 10.
er peace officer, as conſtables, &c. may and ought to do all Vide ſupra.
t in them lies towards the ſuppreſſing of a riot, and may com-
nd all other perſons whatſoever to aſſiſt them therein. Alſo
is certain, That any private perſon may lawfully endeavour to
peaſe all ſuch diſturbances by ſtaying thoſe whom he ſhall
engaged therein from executing their purpoſe, and alſo

by

by ſtopping others whom he ſhall ſee coming to join them; for private perſons may do thus much, as it is moſt certain that they may, towards the ſuppreſſing of a common affray, ſurely *a fortiori* they may do it towards the ſuppreſſing of a riot: Alſo it hath been holden, That private perſons may arm themſelves in order to ſuppreſs a riot; from whence it ſeems clearly to follow, that they may alſo make uſe of arms in the ſuppreſſing of it, if there be a neceſſity for their ſo doing. However it ſeems to be extremely hazardous for private perſons to proceed to thoſe extremities; and it ſeems no way ſafe for them to go ſo far in common caſes, leſt under the pretence of keeping the peace, they cauſe a more enormous breach of it, and therefore ſuch violent methods ſeem only proper againſt ſuch riots as favour of rebellion, for the ſuppreſſing whereof no remedies can be too ſharp or ſevere,—However it is enacted by 1 Geo. 1. c. 5. "That "more perſons than twelve being unlawfully, riotouſly and "multuouſly aſſembled, twelve or more of them ſhall continue "together, and not diſperſe themſelves within one hour after "proclamation made in purſuance of that ſtatute, that then every peace officer of the place where ſuch aſſembly ſhall be, and "all perſons who ſhall be commanded to be aſſiſting to ſuch "officer, may and ought to apprehend all ſuch rioters, and carry them before ſome juſtice of peace; and that if any ſuch "rioter ſhall happen to be killed, maimed, or hurt by reaſon "of their reſiſting ſuch officer, *&c.* the officer ſhall be diſcharged, *&c.*" But the ſtatute being wholly in the affirmative cannot be thought to take away any part of the authority in the ſuppreſſing of a riot, which was before that time given either to officers or private perſons by the common law or by ſtatute.

Popham 121. Kelynge. 76.

A perſon preſent aiding and abetting rioters is a principal in the ſecond degree, under this act of parliament, 4 Burr. 2073.

Vide Douglas, p. 700. n. (1) (2)

Crompton 61. Dalt. c. 46. C. Car. 507.

Sect. 12. Generally offences of this nature are puniſhed by the common law, as treſpaſſes, by fine and impriſonment only; yet ſometimes, where they have been very enormous, they have been puniſhed with the pillory; and anciently, if they were undertaken in contempt of the king's expreſs prohibition of the meeting, under pain of forfeiture of lands, &c. they ſeem to have been puniſhable with ſuch forfeiture.

2 R. Abr. 208.

21 Ed. 4, 13, 14. Dalt c. 88.

C. Car. 252. 2 Hale 155.

Sect. 13. It hath been holden, That the perſons of which a corporation conſiſts, being guilty of a riot, are puniſhable in their natural, but not in their politic capacity; for the corporation itſelf cannot be in fault, becauſe it is inviſible, and exiſts only in ſuppoſition of law. Yet there are ſome precedents by which it appears, that corporations have been amerced, (5) and their liberties ſeized into the king's hands for ſuffering a dangerous riot to happen within their juriſdiction without uſing their endeavours to ſuppreſs it.

(5) Vide the King v. Kennet, Lord Mayor of London, during the riots in the year 1780.

Sect. 14. Women are puniſhable as rioters, but infants under the age of diſcretion are not.

As to the third point, *viz.* How far offences of this nature may be ſuppreſſed and puniſhed by ſtatute; I ſhall conſider, how far they may be ſuppreſſed and puniſhed by one juſtice of peace. And, How far by two or more.

Sect. 15. As to the firſt of theſe points, and it is enacted by 2 Edw. 3. c. 1. "That juſtices of peace ſhall have power to reſtrain offenders, rioters, and all barrators, and to purſue, arreſt, take and chaſtiſe them according to their treſpaſs and offence; and to cauſe them to be impriſoned, and duly puniſhed, &c."

Sect. 16. And this ſtatute has has been liberally conſtrued for the advancement of juſtice; for it hath been reſolved, That a juſtice of peace find perſons rioutouſly aſſembled, he alone without ſtaying for his companions hath not only power to arreſt the offenders, and bind them to their good behaviour, or impriſon them if they do not offer good bail, but that he may alſo authoriſe others to arreſt them by a bare parol command without other warrant, and that by force thereof the perſons ſo commanded, may purſue and arreſt the offenders in his abſence as well as preſence. It is alſo ſaid, That if a juſtice of peace be ſick, and hear that perſons are riotouſly aſſembled, he may ſend his ſervants to arreſt them and bring them before him; and that if he hear that perſons are riotouſly together in a certain place, and go thither and find none there, he may leave his ſervants behind him with a command to arreſt them, when they ſhall come. Alſo it is ſaid, That after a riot is over, any one juſtice of peace may ſend his warrant to arreſt any perſon who was concerned in it, and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour.

14 H. 7. 9.

Lamb. 181, &c.

Dalt. c. 46. B. Peace. 7.

Pulton 28. Crom. 62, 63, 64, 65, 195. Kellwood 41.

Sect. 17. But it ſeems to be agreed, that no one (a) juſtice of the peace hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over. Alſo if one juſtice of peace proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing of himſelf, becauſe no ſingle juſtice of peace is by this ſtatute made a judge of the ſaid offence. (b) But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the ſtatute of *Northampton*, and any one juſtice of peace acting *ex officio*, in purſuance of the ſaid ſtatute, ſeize the armour and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity, as appears more at large in the chapter of

(a) B. Peace. 7. Kellw. 41. Lamb. 181, &c. Pulton 26. Summary 137, Crom. 61, 63, 65. Dalt. c. 46. Con. B. Judges 10.

(b) 8 Co. 121. Dalt. c. 22, 46.

of affrays; and for the ſame reaſon, if a juſtice of peace proceeding on the ſtatute of 15 Rich. 2. againſt forcible entries or detainers, ſhall upon his own view record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed, as hath been ſhewn in the foregoing chapter. Alſo if a juſtice of peace acting as a judge by virtue of any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch uncontroulable credit to all matters of record, made by a judge of record as ſuch, that it will never admit of an averment againſt the truth thereof.

Crompton. 65.
Lambard. 317.
Vide inf. ſ. 25.

Sect. 18. It hath been queſtioned, Whether a juſtice of peace be authorized by virtue of the above-mentioned ſtatute of Edw. 3. c. 1. to raiſe the power of the county to ſuppreſs a riot; but it ſeemeth, That by being made a conſervator of the peace he hath by an implication of law, all ſuch powers in relation thereto, as are incident to the office of a conſervator of the peace by the common law; and conſequently, That he hath a right of demanding the aſſiſtance of others to enable him to preſerve the peace in the ſame manner, as every ſheriff and conſtable is impowered to demand ſuch aſſiſtance by the common law: However there ſeems to be no reaſon to doubt, but that every juſtice of peace is authorized by 17 Rich 2. c. 8. to raiſe the power of the county to repreſs a riot; for by the ſaid ſtatute it is enacted, "That as ſoon as the ſheriffs, and other the king's miniſters." under which words all juſtices of peace ſeem clearly to be included, "ſhall hear of a riot, rout, or other aſſembly "againſt the peace, they with the power of the county where ſuch "caſe ſhall happen, ſhall diſturb ſuch malice with all the "power, and ſhall apprehend all ſuch offenders, and put them "in priſon, until due execution of the law be made of them; "and that the lords and other liege people of the realm ſhall "attend, with their whole ſtrength and power, the ſheriffs "and miniſters aforeſaid."

Pult. 25, 26.
Lambard 314.
Crompton 62.
3 H. 7. 10.
3 Inſt. 158.
Vide ſupra.

Sect. 19. As to the ſecond point, *viz.* How far offences of this nature may be ſuppreſſed and puniſhed by two or more juſtices of peace; it is enacted by 13 Hen. 4. c. 7. "That "any riot, aſſembly, or rout of people againſt the law, "made in parties of the realm, that the juſtices of peace, "three or two of them at the leaſt, and the ſheriff or under-"ſheriff of the county where ſuch riot, aſſembly or rout "ſhall be made hereafter, ſhall come with the power of the "county (if need be) to arreſt them, and ſhall arreſt them; "and the ſame juſtices and ſheriff, or under-ſheriff, ſhall have "power to record that which they ſhall find ſo done in their "preſence againſt the law. And that by the record of the "ſame juſtices and ſheriff, or under-ſheriff, ſuch treſpaſſers

d offenders ſhall be convict in the manner and form as is tained in the ſtatute of forcible entries."

. 20. In the conſtruction this ſtatute, compared with the e-mentioned ſtatute of 17 Rich. 2. c. 8. and alſo with the te of 2 Hen. 5. c. 8. it hath been holden, That all perſons ſoever, and even noblemen, and all others of what conditi- r degree ſoever they may be, except women, clergymen, Pulton 29. ons decrept, and infants under the age of fifteen years, are Dalt. c. 46. d under pain of fine and impriſonment, upon reaſonable Crom. 63. ing to attend the juſtices and ſheriffs in the execution of the Lamb. 116,315. ſtatute, and not only to arreſt the rioters, but alſo to con- them to priſon.

. 21. Alſo it hath been holden, That thoſe who attend Pop. 120. 121. juſtices in order to ſuppreſs a riot, may take with them ſuch Crompton 62. ons as ſhall be neceſſary to enable them effectually to do it, Dalton c. 46. that they may juſtify the beating, wounding, and even the Lambard 316. ng of ſuch rioters as ſhall reſiſt, or refuſe to ſurrender them- es.

. 22. It is ſaid, That the juſtices of peace are not only im- Lamb. 315. ered by the ſaid ſtatute, to raiſe the power of the county to 316, 318, 319. them, in ſuppreſſing a riot which ſhall happen within their Dalt. c. 46. view or hearing, but alſo, that they may ſafely do it upon Pulton 29. redible information given them of a notorious riot happening Crom. 64. diſtance, whether there were any ſuch riot in truth or not; it may be dangerous for them to ſtay till they can get cer- information of the fact: But they ſeem to be puniſhable for ming the country in this manner, without ſome ſuch probable und of their proceeding, as would induce a reaſonable man think it neceſſary and convenient.

. 23. It ſeems clear from the ſaid ſtatute, That if the ices, &c. in going towards the place where they have heard that re is a riot, ſhall meet perſons coming from thence riotouſly ayed, they may arreſt them for being aſſembled together in Dalt. c. 46. an unlawful manner, and alſo make a record thereof, &c. Lamb. 316. the ſtatute extends to all other unlawful aſſemblies whatſo- Crom. 63. r, as well as to riots.

. 24. Alſo it ſeems clear, That after the juſtices have a view of a riot they may make a record thereof, whether offenders be in cuſtody at the ſame time, or have eſcaped: it is ſaid that the juſtices may lawfully, upon a freſh pur- t, arreſt ſuch of the offenders as ſhall have eſcaped, but that Lamb. 318. y cannot at another time award any proceſs on ſuch a record, Dalt. c. 46. therefore that they ought to ſend it into King's Bench, if any Pulton 29. the offenders eſcape from a freſh purſuit, and that proceſs 8 Co. 121. ll iſſue againſt them from thence: However there ſeems to Vide inf. ſ. 29. no doubt, but that ny of the ſame juſtices who have recorded Vide ſup. 15, 16. riot, or any other juſtice of peace, may at any time by virtue of

of the above mentioned ſtatute of 34 Edw. 3. c. 1. arreſt
who have been notoriouſly guilty of a riot, in order to c
them to find ſureties for their good behaviour.

Raymond 386. Crom. 65. 63. Dalton c. 46.

Sect. 25. It ſeemeth to be certain, That the record of a
expreſly mentioned to have happened within the view of the
tices by whom it is recorded, is a conviction of ſo great a
rity, that it can no way be traverſed, however little grou
truth there might be to affirm that any riot at all was comm
or however innocent the parties may be of the fact rec
againſt them. And it is ſaid, That if any one be bound b
cognizance to keep the peace, and on a *ſcire facias* thereon
a record of a riot be produced againſt him, he ſhall not only
concluded thereby from pleading the general iſſue, but alſo
pleading any matter of juſtification whatſoever.

Pulton 29. Lamb. 316, 317.

Sect. 26. However it ſeemeth clear, That if in ſuch a
cord of a riot it be contained, that the party was guilty th
in of a felony, or maim, or reſcous, the party ſhall be concl
thereby as to the riot only, and not as to any of the other ma
becauſe the juſtices of peace, have by this ſtatute, a judicial
thority over no other offences except riots, routs, and unl
aſſemblies.

Lambard 317. Dalton c. 130.

Sect. 27. And inaſmuch as ſuch a record is a final convi
of the parties as to all ſuch matters as are properly contai
in it, it ought to be certain both as to the time and place of
offence, and the number of perſons concerned therein, and
ſeveral kinds of weapons made uſe of by them, and all o
circumſtances of the fact; for ſince the parties are concluded f
denying the truth of ſuch a record, and have no other rem
to defend themſelves againſt it, but only by taking advan
of the inſufficiency of what is contained in it, they may j
demand the benefit of excepting to it, if it do not expreſly ſ
both that they are guilty within the meaning of the ſtatute;
alſo how far they are guilty, and that the juſtices have pu
ed the power given them by the ſaid ſtatute, and from the
ground it ſeems alſo to follow, That ſuch a record may be
cepted againſt, if it do not appear to have been made by
ſheriff or under-ſheriff in concurrence with the juſtices.

Lambard 316. Dalton c. 46.

Lambard 319. Raymond 386. Con. Dalt. c. 46.

Sect. 28. It is ſaid that the offenders being under the
reſt of the ſaid juſtices, and alſo convicted by a recor
their offence, ought immediately to be committed to gao
the ſame juſtices, till they ſhall make fine and ranſom to
king, which can be aſſeſſed by no other juſtices of peace,
cept thoſe by whom the record of the offence was ma
and by 2 Hen. 5. c. 8. ſuch fine ought to be larger tha
was wont to be before that ſtatute, for the ſupport of
charges of the ſaid juſtices, &c. whereof payment ough

Lambard 317. Dalton c. 46.

made by the ſheriff, by indenture thereof between him and

Sect. 29. It is farther enacted by the ſaid ſtatute of 13 Hen. c. 7. that if it ſhall happen, "That ſuch treſpaſſers and offenders be departed before the coming of the ſaid juſtices and ſheriff, and under-ſheriff, that the ſame juſtices, three, or two of them ſhall diligently inquire within a month after ſuch riot, aſſembly, or rout of people ſo made, and thereof ſhall hear and determine according to the law of the land."

Sect. 30. Alſo it is farther enacted by 19 Hen. 7. c. 13. That the ſheriff having a precept directed him to return a jury in purſuance of 13 Hen. 4. c. 7. ſhall return twenty-four perſons dwelling within the ſhire where ſuch riot, rout, or unlawful aſſembly ſhall be ſo committed and done, whereof every of them ſhall have lands and tenements within the ſame ſhire, to the yearly value of twenty ſhillings of charter-land or freehold, or twenty-ſix ſhillings and eight-pence of copyhold, or of both, over and above all charges, for to enquire of the ſaid riot, rout, or unlawful aſſembly. And that he ſhall return upon every perſon ſo by him impanelled, in iſſues at the firſt day twenty ſhillings, and at the ſecond day forty ſhillings, if they appear not, and be ſworn to inquire of the premiſſes at the firſt day. And that the ſheriff for every default, &c. ſhall forfeit twenty pounds, &c."

Sect. 31. It is clearly ſettled, whether the month, within which the juſtices of peace are confined to take their inquiry by virtue of theſe ſtatutes, muſt be reckoned according to the computation of a lunar, or ſolar month; however, it ſeems to be agreed, That if the juſtices give their charge to the jury, and 'tis ſaid, that if they do but award a precept for the returning of the jury, within a lunar month, they may take the verdict afterwards, for the cauſe being regularly attached in them within the time preſcribed by the ſtatute, ſhall be proſecuted as all other caſes ought, with ſuch convenient diſpatch as to the judges thereof ſhall ſeem proper; and the ſtatute, by obliging the juſtices to make ſo ſpeedy an enquiry, meant not to hurry them in the execution of it.

1 Sid. 186. 1 Keb. 695. Vide Supra. Lamb. 322. Dalt. c. 46. Pulton 29. 6 Mod. 141. Salkeld 593.

Sect. 32. It is generally ſaid, That any juſtice of the quorum may take ſuch an enquiry, whether they dwell near the place where the riot happened, or at a diſtance, or whether they went to view the riot or not; for the ſtatute ought to be conſtrued as largely as the words ſhall bear, in favour of the juſtices power in the ſuppreſſing of ſuch riots; and therefore thoſe words in the ſtatute, that the ſame juſtices, &c.

Lamb. 322, 327. Dalton c. 46. Pulton 29. Cromp. 62, 63. ſeems contrary.

ſhall enquire, ought to be thus expounded, That the ſame ju
tices who were before empowered to raiſe the *poſſe*, &c. ſhall i
quire; and it is clear that any juſtices in the county are with
that part of the ſtatute which gives that power; neither is it a
way reaſonable to conſtrue the laſt clauſe of the ſaid ſtatu
See Sect. 44. whereby the juſtices who dwell nigheſt, are bound to execute t
ſtatute under pain of one hundred pounds, in ſuch a manner
to reſtrain the juriſdiction of thoſe who by the foregoing part
the ſaid ſtatute are authoriſed to execute it; for if ſuch an e
poſition ſhould prevail, the negligence of the juſtices who happ
to dwell nigheſt would make the ſtatute wholly ineffectual.

Lambard 321. Raymond 386. Salkeld 593. Catthew 383.

Sect. 33. It ſeems clear from the wording of the abovemen
tioned clauſe, that the ſheriff ought not to join with the juſtic
in taking of ſuch an inquiry, as he ought to do in making a re
cord of a riot upon view.

Sect. 34. Alſo it ſeems clear from theſe words in the ſtatu
of 13 Hen. 4. c. 7. "That the ſame juſtices ſhall hear an
Lamb. 323, 328. Dalt. c. 46, & c 132. Pulton 26 Crompton 67. determine, &c." that they may award proceſs under their ow
teſte againſt thoſe who ſhall be indicted before them of any
the offences above-mentioned, according to the form of the ſa
ſtatute; and alſo that they may award the like proceſs for th
trial of a traverſe of ſuch an inquiſition, and do all other thing
in relation thereunto, which are of courſe incident to all cour
of record.

Dalt. c. 46. Crompton 61.

Sect. 35. But it hath been queſtioned, whether the juſtice
can ſafely diſmiſs the offenders upon their paying ſuch a fine a
ſhall be impoſed upon them, without ſome judgment for thei
impriſonment as well as fine, inaſmuch as the ſtatute of 2 He
5. c. 8. is expreſs, That all rioters attainted of great and heinou
riots ſhall have one whole year's impriſonment at the leaſt, with
out bail, &c. and that rioters attainted of petit riots, ſhall hav
impriſonment, as beſt ſhall ſeem to the king or to his council.

Crompton 63. Pulton 24. Dalton c. 46. See 1 Leon. 282.

Sect. 36. Formerly, if the fine impoſed upon rioters by juſ
tices of peace had been too favourable, it was a common prac
tice of the court of Star-chamber afterwards to impoſe ſuch othe
fine as might, together with that which was aſſeſſed by the juſ
tices of peace be proportionable to the heinouſneſs of the offence
and this was ſaid not to be a double puniſhment for the ſame of
fence, but only on award of due penalty at ſeveral times.

Sect. 37. It is farther enacted by the ſaid ſtatute of 1
Hen. 4. c. 7. "That if the truth cannot be found in th
"manner as is aforeſaid, then within a month then next fol
"lowing, the juſtices, three, or two of them, and the ſhe
"riff, or under-ſheriff, ſhall certify before the king and
"his

" his council all the deed and the circumſtances thereof: which " certificate ſhall be of like force as the preſentment of twelve " men; upon which certificate the ſaid treſpaſſers and offenders " ſhall be put to anſwer, and they which ſhall be found guilty, " ſhall be puniſhed according to the diſcretion of the king and " his council. And if ſuch treſpaſſers and offenders do traverſe " the matter ſo certified the ſame certificate and traverſe ſhall " be ſent into the King's Bench, there to be tried and determined, " as the law requireth; and if they appear not before the king " and his council, or in the King's Bench, upon ſuch proceſs " and proclamation for their appearance as are required by the " ſaid ſtature, they ſhall be attainted of the riot, &c.

Sect. 38. And it is farther enacted by 19 Hen. 7. c. 13. " That if a riot, &c. be not found by the jury by reaſon of any " maintenance or embracery of the jurors, then the ſame juſ- " tices, &c. over and above ſuch certificate which they muſt " and are bound to make by the ſaid ſtatute of 13 Hen. 4. c. 7. " ſhall in the ſame certificate certify the names and miſdemea- " nors of ſuch maintainers, &c. on pain that every of the ſaid " juſtices, &c. ſhall forfeit twenty pounds, if they have no rea- " ſonable excuſe for not certifying the ſame; which certificate " ſo made ſhall be of like force as if the matter were found by " verdict of twelve men; and every perſon duly proved to be " ſuch a maintainer, &c. ſhall forfeit twenty pounds, &c.

Sect. 39. In the conſtruction of theſe ſtatutes it hath been holden, That the certificate required by the above mentioned ſtatutes may be made, either by the juſtices, &c. who went to ſee the riot, or by thoſe who took the inquiry; but it ſeems to be moſt proper, That wherever ſuch an inquiſition is taken, ſuch certificate ſhould be made by ſuch juſtices who made the inquiry, becauſe they having had the examination of the fact, muſt needs be beſt able to judge of the circumſtances thereof, and in that reſpect are the moſt proper perſons to ſupply the defects of the inquiry: However, the ſaid ſtatute of 19 Hen. 7. c. 13. which is grafted on 13 Hen. 4. c. 7. ſeems clearly to imply, That ſome juſtices are bound in a more eſpecial manner to make ſuch certificate than any others, by impoſing the penalty of twenty pounds on thoſe who neglect to make it as they are bound by 13 Hen. 4. c. 7. which part of the ſtatute ſeems to be moſt reaſonably applied to thoſe juſtices who took the inquiry, or in caſe that no inquiry was taken, to thoſe juſtices who endeavoured to take one, but by the fault of others were hindred from taking it; for there was no need of ſuch an additional penalty on the neighbouring juſtices who were bound before to do their duty in executing 13 Hen. 4. c. 7.

Lamb. 323, 326. Fulton 29. Dalton c. 46.

under pain of forfeiting one hundred pounds, as will be ſhewn, ſection forty four, &c.

Pulton 29. Lambard 324. Dalton c. 46.

Sect. 40. Alſo it is generally ſaid, That ſuch a certificate muſt be made within a month after the inquiry; and this ſeems to be a very reaſonable conſtruction where an enquiry has actually been made; but it may happen that no inquiry at all may be taken, either through the default of the ſheriff in not returning a jury, or the obſtinacy of the jurors in refuſing to appear, or the rebellious humour of the people in not ſuffering the juſtices to do their duty; in all which caſes a certificate ſeems to be required, both by the intent and letter of the ſtatute, the words whereof as to this purpoſe are, "If the truth cannot be found "in the manner as is aforeſaid, then within a month then next "following, the juſtices, &c. ſhall certify, &c." And therefore in theſe caſes it ſeems proper to make a certificate of the obſtructions, which prevented the taking of ſuch an inquiry, within a month after they happen.

Lambard 324. Con. Cromp. 63. Dalt. c. 46. & 103. B. Præm. 1.

Sect. 41. It ſeemeth clear from the plain words of the ſtatute, That the certificate ought to be made to the privy council board which is clearly diſtinguiſhed, both from the Chancery and alſo from the King's Bench, which in ſome ſtatutes relating to judicial proceedings, are taken for the king's council.

Pulton 29. Crompton 63. Lamb. 325, 326. Dalton c. 46.

Sect. 42. It is ſaid, That if there be variance between the inquiſition and certificate, that ſhall be taken which is moſt for the king's advantage; and therefore if the inquiſition be of a riot by ten perſons, and the certificate of a riot by twenty, or by ten in harneſs; or of a battery joined with a riot; that the certificate ſhall be preferred, becauſe the fine to the king ſhall be the greater; but if they differ only as to the time, it is ſaid that the inquiſition ſhall be preferred,

Dalton c. 46. & c. 130. Lamb. 321, 322.

Sect. 43. Alſo it ſeemeth certain, That ſuch a certificate being in nature of an indictment at common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riots and maintenance, &c. but perhaps it need not expreſs the additions of the offenders.

Sect. 44. It is farther enacted by the ſaid ſtatute of 13 Hen. 4. c. 7. "That the juſtices of peace dwelling higheſt in every county where ſuch riot, aſſembly, or rout of people ſhall be made hereafter, together with the ſheriff or under-ſheriff of the ſame county, and alſo the juſtice of aſſizes, for the time that they ſhall be there in their ſeſſion, in caſe that any ſuch riot, aſſembly, or rout be made in their preſence, ſhall

execution of this ſtatute, every one upon pain of one hundred pounds, to be paid to the king as often as they ſhall be found in default of the execution of the ſame ſtatute."

Sect. 45. In the conſtruction of this clauſe the following opinions have been holden: Firſt, That no juſtice of peace is in danger of incurring the penalty thereof, unleſs he dwell in the county wherein a riot happens. Lambard 236. Crompton 63. Dalton c. 46.

Sect. 46. Secondly, That if any juſtices of peace, who do not dwell neareſt to the place, do actually execute the ſtatute, they excuſe all the reſt. Dalton c. 46. Lambard 326. Crompton 63.

Sect. 47. Thirdly, That if the juſtices whoſe dwelling was neareſt at the time of the riot, or one of them, happen to die within the month, thoſe whoſe dwelling is thereby become the neareſt are bound to execute the ſtatute in the ſame manner as the others were. Pulton 30. Crompton 62.

Sect. 48. Fourthly, That notwithſtanding thoſe juſtices only, who dwell neareſt, are liable to the penalty of the ſtatute, yet if any others on notice neglect to ſupply their default, they are finable at diſcretion. Lambard 327. Dalton c. 46. Pulton 30,

Sect. 49. Fifthly, That if the two juſtices, or one of them, do their duty in executing, or endeavouring to execute the ſtatute, they ſhall not incur any penalty through a default of the ſheriff, *&c.* either in refuſing to appear, or to return a jury, *&c.* Crompton 63. Lambard 327. Dalton c. 46. Pulton 30.

Sect. 50. Sixthly, That the ſaid juſtices. *&c.* ſhall not avoid the penalty by executing the ſtatute in part only, as by recording a riot without committing the parties. Crompton 62.

Sect. 51. Seventhly, That no juſtice, *&c.* is ſubject to the penalty of the ſaid ſtatute on account of a petit riot, but only of ſuch as are notorious, and in nature of inſurrections and rebellions. Dalton. c. 46.

Sect. 52. Eighthly, That if a juſtice of peace, &c. had no expreſs notice given him of the riot, he ſhall be excuſed unleſs it were ſo very flagrant, that by common intendment, every one dwelling near it could not but have notice thereof. Dyer 210. Lambard 328. Pulton 28. Crompton 62. Dalton c. 46.

Sect. 53. Ninthly, That the acquieſcence or agreement of the parties aggrieved is no excuſe to the juſtices, becauſe they ought, *ex officio* to make the inquiry, and make proclamation whether any will give evidence for the king, &c. and may bind ſuch of the parties grieved, as ſhall refuſe to proſecute their complaint, to their good behaviour. Crompton 62. Lambard 322. Pulton 28. Dalton c. 46. Crompton 64.

Sect.

Sect. 54. Alſo it is farther enacted by 2 Hen. 5. c. 8. "That "upon any default of the ſaid juſtices, &c. touching the execution "of 13 Hen. 4. a commiſſion ſhall be awarded at the inſtance "of the party grieved, to enquire as well of the truth of the caſe, "as of the default of the ſaid juſtices, &c. and that the ſaid com- "miſſioners ſhall preſently return into Chancery the inqueſts "before them taken; and that the jurors, who ſhall make in- "quiry, ſhall be worth 10l. *per annum*, and ſhall be returned "by the coroners, if the ſheriff, ſuppoſed to be in default, con- "tinue in his office, &c." See the ſtatute.

Sect. 55. And it is farther enacted by 2 Hen. 5. c. 9. and 8 Hen. 6. c. 14. "That the lord chancellor, upon complaint "made to him, that a dangerous rioter is fled into places un- "known, and alſo upon a ſuggeſtion under the ſeals of two juſ- "tices of peace and the ſheriff, that the common fame and voice "runneth in the county of the riot, may award a *capias* againſt "the party, returnable in Chancery, upon a certain day, &c. "and afterwards a *writ of proclamation* returnable in the King's "Bench, &c."

Sect. 56. But all the penalties of the above-mentioned ſtatutes having been found by experience not to be ſufficient to reſtrain the rage of the populace from breaking out into dangerous tumults, whenever they happen to be perſuaded that they lie under any real or pretended grievance, it was thought neceſſary to make a farther proviſion againſt ſuch inſolent diſturbances of the peace, by more ſevere laws; and to this end it was enacted by 1 Geo. 1. c. 5.—"That if any perſons to the number of "twelve, (5) or more, being unlawfully, riotouſly, and tu- "multuouſly aſſembled together, to the diſturbance of the public "peace, and being required or commanded by any juſtice of "peace, ſheriff of the county, or under-ſheriff, or by the may- "or, bailiff or bailiffs, or other head-officer or juſtice of the "peace of any city or town corporate, where ſuch aſſembly ſhall "be, by proclamation to be made in the king's name, immedi- "ately to diſperſe themſelves, and peaceably to depart to their "habitations, or to their lawful buſineſs, under the pains of "the ſaid ſtatute, ſhall afterwards unlawfully, riotouſly, and "tumultuouſly continue together by the ſpace of one hour after "ſuch proclamation made, or after a wilful let or hindrance "of a juſtice of peace, &c. from making the ſame proclamation, "ſhall be adjudged felons without benefit of clergy, &c."

4 Burr. 2073. (5) It is not perfectly clear from the penning of the act, whether it is neceſſary that there ſhould have been twelve or more rioters in order to entitle the party injured to his action againſt the hundred. (Vide ſect. 59.) But, according to the moſt obvious conſtruction, that number is not neceſſary to conſtitute the felony created by ſection. 4 Douglas 700.

Sect. 57. And it is farther enacted by the ſaid ſtatute, "That if any perſon or perſons, ſhall with force and arms "wilfully

wilfully and knowingly oppoſe, obſtruct, or in any manner wilfully and knowingly let, hinder, or hurt any perſon, &c. who ſhall begin to proclaim, or go to proclaim, according to the proclamation appointed by the ſaid ſtatute, whereby ſuch proclamation ſhall not be made, they ſhall be adjudged felons without benefit of clergy."

Sect. 58. And it is farther enacted by the ſaid ſtatute, That if any perſons unlawfully, riotouſly and tumultuouſly aſſembled together, to the diſturbance of the public peace, ſhall unlawfully and with force demoliſh or pull down, or begin to demoliſh or pull down any church or chapel, or any building for religious worſhip, certified and regiſtered according to 1 Will. & Mar. c. 18." which is commonly called The Toleration Act, "or any dwelling-houſe, barn, ſtable, or other out-houſe, they ſhall be adjudged felons without benefit of clergy."

N. B. Vide the trials of the rioters in the year 1780.

Sect. 59. And it is farther enacted by the ſaid ſtatute, "That whenever any ſuch church, &c. ſhall be demoliſhed, &c. by any ſuch rioters, &c. the inhabitants of the town or hundred wherein the riot happened, ſhall be bound to make good the damage, &c."

Vide Cowper 485.

† *Sect.* 60. And it is recited by 9 Geo. 3. c. 29. "That whereas ſome doubts have ariſen whether the ſaid act of 1 Geo. 1. ſ. 2. c. 5. extends to the pulling down and demoliſhing of mills," thereupon it is enacted, "That if any perſon or perſons, unlawfully, riotouſly, and tumultuouſly aſſembled together, to the diſturbance of the public peace, ſhall unlawfully, and with force demoliſh, or pull down or begin to demoliſh or pull down any wind ſaw-mill, or other wind-mill, or any water-mill, or other mill, which ſhall have been or ſhall be erected, or any of the works thereto reſpectively belonging; ſuch offender ſhall ſuffer death without clergy;" provided the proſecution be commenced within eighteen months after the offence committed.

For the riotous deſtruction of fences, trees, &c. vide 6 Geo. 1. c. 16. ante. p. 215.

† *Sect.* 61. It is enacted by 13 Car. 2. c. 5. "That no perſon or perſons whatſoever, ſhall ſolicit, labour, or procure, the getting of hands, or other conſent of any perſons above the number of twenty, to any petition, complaint, remonſtrance, declaration, or other addreſs to the king, or both, or either houſes of parliament, for alteration of matters eſtabliſhed by law in church or ſtate, unleſs the matter thereof have been firſt conſented unto, and ordered by three or more juſtices of that county, or by the major part of the grand jury of the county, or diviſion of

Noy 101. 2 Croke 37. Moor 753. 4 Comm. 147.

"of the county, where the ſame matter ſhall ariſe at their public aſſizes, or general quarter ſeſſions, or if ariſing in London, by the lord mayor, aldermen, and common council aſſembled; and that no perſon or perſons whatſoever, ſhall repair to his majeſty, or both, or either the houſes of parliament upon pretence of delivering any petition, complaint, remonſtrance, or declaration, or other addreſſes accompanied with exceſſive number of people, nor at any one time with above the number of ten people upon pain of incurring a penalty not exceeding one hundred pounds and three months imprisonment, on conviction, by two witneſſes, within ſix months at the King's Bench aſſizes, or quarter ſeſſions. But this act ſhall not prevent the preſentation of any public or private grievance, to any member of parliament, by any number not exceeding twenty, or to the king, for any remedy to be had thereupon." (6)

(6) N. B. By 1 Will. and Mary. ſeſſ. 2. c. 2. ſ. 1. article 5, uſually ſtyled the Bill of Rights, it is enacted, "That it is the right of the ſubjects to petition the king, and that all commitments and "proſecutions for ſuch petitioning are illegal." On the trial of Lord George Gordon, it was contended that this article had virtually repealed the above ſtatute of Charles; but Lord Mansfield declared it was the unanimous opinion of the court, that neither that, nor any other act of parliament had repealed it; and that it was in full force, Douglas 592, 593.

CHAPTER THE SIXTY-SIXTH.

OF OFFENCES BY OFFICERS IN GENERAL.

OFFENCES under the degree of capital, more immediately againſt the ſubject, not amounting to an actual diſturbance of the peace, are either; Such as are committed by officers; Or, Such as are committed by common perſons without any relation to an office.

Offences by officers ſeems reducible to the following heads; Firſt, Neglect, or breach of duty. Secondly, Bribery, Thirdly, Extortion.

Co. Lit. 233, 234.

Sect. 1. As to the firſt of theſe offences, I take it to be agreed, That in the grant of every office whatſoever, there is this condition implied by common reaſon, that the grantee ought to execute it diligently and faithfully: For ſince every office is inſtituted, not for the ſake of the officer, but for the good of ſome other, nothing can be more juſt, than that he, who either neglects or refuſes to anſwer the end for which his office was ordained, ſhould give way to others who are both able and willing to take care of it.

Vide the caſe of the King v. Bambridge, Mich. Term, 23 Geo. 3. or an information for miſfaiſance, as accountant at the pay-office, Whitehall.

And

herefore it is certain, That an officer, is liable to a for-
of his office, not only for doing a thing directly contrary
design of it, but also for neglecting to attend his duty at
al, proper, and convenient times and places, whereby any
ge shall accrue to those, by or for whom he was made an
. And some have gone so far as to hold, That an office
ning the administration of justice, or the common-wealth,
be forfeited for a bare non-user, whether any special da-
be occasioned thereby or not: But this opinion doth not ap-
to be warranted by any resolution in point, and the (a)
rities which are cited to maintain it, do not seem to come
it. However it cannot but be very reasonable, That he
so far neglects a public office, as plainly to appear to take
nner of care of it, should rather be immediately displaced,
the publick be in danger of suffering that damage, which
t but be expected some time or other from his negli-
.

9 Co. 50.
Co. Lit. 233.
2 Roll. 153, l. 36
2 And. 119.
Hard. 130.
Modern 193.
1 Sid. 81.
C. Car. 491.
(a) 39 H. 6. 32.
20 Ed. 4. 5.
22 Ass. 54.
2 H. 7. 11.
Plowden 379.
L. Quin.
Ed. 4. 27.
11 Ed. 4. 1.

. 2. But it would be endless to enumerate all the parti-
instances, wherein an officer may be discharged or fined;
t also seems needless to endeavour it, because they are ge-
ly so obvious to common sense, as to need no explication;
hat can be more plain, than that a gaoler deserves to be
arged and fined, for (b) voluntarily suffering his prisoners
cape, or for (c) barbarously misusing them? What can be
evident, than that a (d) sheriff is justly punishable for per-
ng a jury to underprize goods in the execution of a *fieri fa-*
&c. And therefore I shall leave the particular cases of
nature to every man's own judgment, which from the consi-
tion of the general rules above-mentioned, and the various
mstances of every case, will easily discern how far each of-
e of this kind deserves to be punished.

(b) 9 Co. 50.
(c) Raym. 216.
(d) C. Jac. 426.

See 4 Comyns digest tit. officer.

HAPTER THE SIXTY-SEVENTH.

Of BRIBERY.

N treating of bribery, I shall consider, What it is. And
How it is punishable.

. 1. And first, Bribery in a strict sense is taken for
reat misprision of one in a judicial place, taking any
able thing whatsoever, except meat and drink of small
e, of any one who has to do before him any way, for
doing

3 Inst. 145.

doing his office, or by colour of his office, but of the [illegible] only.

3 Inſt. 149. Hobart 9. C. Jac. 65. 1 Levinz. 40. 3 Modern 26. 2 Salkeld 695. 11 Modern 193.

Sect. 2. But bribery in a large ſenſe is ſometimes taken [illegible] the receiving or offering of any undue reward, by or to any [illegible] ſon whatſoever, whoſe ordinary profeſſion or buſineſs relates [illegible] the adminiſtration of publick juſtice in order to incline him [illegible] do a thing againſt the known rules of honeſty and integrity; [illegible] for the law abhors any the leaſt tendency to corruption in those [illegible] who are any way concerned in its adminiſtration, and will not [illegible] endure their taking a reward for the doing a thing which [illegible] ſerves the ſevereſt of puniſhments. (1)

(1) Therefore, to bribe perſons, either by giving money, or promiſes to vote at [illegible] tions of members of corporations, which are erected for the ſake of public government [illegible] an offence for which an information will lie. 2 Ld. Ray. 1377. 1 Black. 383. 12 [illegible] 314. But the court will grant an information for this offence very cautiouſly, ſince [illegible] additional penalties by ſtatute. 1 Black. 380. Infra. ſect. 7.

3 Inſt. 148.

Sect. 3. Alſo bribery ſometimes ſignifies the taking or giving [illegible] of a reward for offices of a public nature; and ſurely nothing [illegible] can be more palpably prejudicial to the good of the public [illegible] than to have places of the higheſt concernment, on the due [illegible] cution whereof the happineſs of both king and people doth [illegible] peud, diſpoſed of not to thoſe who are moſt able to execute them, [illegible] but thoſe who are moſt able to pay for them; nor can any thing [illegible] be a greater diſcouragement to induſtry and virtue, than to [illegible] thoſe places of truſt and honour, which ought to be the reward [illegible] of thoſe who by their induſtry and diligence have qualified themſelves for them, conferred on ſuch who have no other recommendation but that of being the higheſt bidders; neither can [illegible] thing be a greater temptation to officers to abuſe their power [illegible] by bribery and extortion, and other acts of injuſtice, than the [illegible] conſideration of the great expence they were at in gaining their [illegible] places, and the neceſſity of ſometimes ſtraining a point to make [illegible] their bargain anſwer their expectation.

Vide Noy 102. Moor 781.

For which reaſons, among many others, it is expreſſly [illegible] acted by 12 Rich. 2. c. 2. "That the chancellor, treaſurer, [illegible] "keeper of the privy ſeal, ſteward of the king's houſe, the keeper [illegible] "chamberlain, clerk of the rols, the juſtice of the one bench [illegible] "and of the other, barons of the Exchequer, and all other [illegible] "ſhall be called to ordain, name, or make juſtices of the peace [illegible] "ſheriffs, eſcheators, cuſtomers, comptrollers, or any other [illegible] "ficer or miniſter of the king, ſhall be firmly ſworn that [illegible] "ſhall not ordain, name, or make any of the above [illegible] "tioned officers, for any gift, or brocage, favour or affection [illegible] "nor that none which ſueth by himſelf, or by others, privily [illegible] "ope

nly, to be in any manner of office, ſhall be put in the e office, or in any other, but that they make all ſuch cers and miniſters, of the beſt and moſt lawful men, and ficient to their eſtimation and knowledge."

ſo by 4 Hen. 4. c. 5. "No ſheriff ſhall let his bailiwick farm to any man, for the time that he occupieth ſuch of-, &c."

ſo it is enacted by 5 & 6 Edw. 6. c. 16. "That if any rſon ſhall bargain or ſell, or take any reward, or promiſe any reward for any office, or the deputation of any office, y way concerning the king's revenue, or the keeping of his ſtles, or the adminiſtration or execution of juſtice, (unleſs be ſuch an office as had been uſually granted before the ma-ng of the ſaid act by the juſtices of the King's Bench or Com-n Pleas, or by juſtices of aſſize) that then every ſuch per-n ſo bargaining or ſelling, or taking ſuch reward, or promiſe, . ſhall not only forfeit his right to ſuch office, or to the no-mination thereof, but alſo every perſon who ſhall give any ſuch ward or promiſe, &c. ſhall be adjudged a diſabled perſon law, to have or enjoy ſuch office, &c." Vide Noy 102. Moor. 781.

ct. 4. In the conſtruction of this ſtatute of 5 & 6 Edw. 6. following points have been reſolved: Firſt, That the offices chancellor, regiſter, and commiſſary in eccleſiaſtical courts, within the meaning of the ſtatute, inaſmuch as thoſe courts, not only determine matters which are brought before them, ely *pro ſalute animæ*, but alſo have the deciſion of diſputes erning the lawfulneſs of matrimony and legitimation of dren, which touch the inheritance of the ſubjects, and hold plea of legacies and tithes, *&c.* in which reſpects are courts of juſtice; but it hath been adjudged, that no e in fee is within the ſtatute. C. Jac. 269. 3 Inſt. 148. Salkeld. 468. 2 Levinz 289. 2 Ven. 187 467.

ct. 5 Secondly, That one, who makes a conſtract for an e contrary to the purport of the ſaid ſtatute, is ſo far diſabled hold the ſame, that he cannot at any time during his life be tored to a capacity of holding it by any grant or diſpenſation atſoever. 2 Levinz 151. Hobart 75. Co. Lit. 234. C. Car. 361. C. Jac. 386.

Thirdly, That a bond by a deputy of an office to pay a tain ſum at all events, is within the ſtatute, and conſequently lly void, though it alſo contain other conditions which, they ſtood by themſelves would be good; but not a bond pay h if the profits or a certain ſum out of the profits of the ce for a deputation. Salk. 466, 468. 6 Modern 234. 3 Co. 32. C. Eliz. 529, 530. 1 And. 107, 150.

Fourthly, That the ſtatute extends not to offices in the ntations. Salkeld 411. Quære 2 Me.

Sect.

3 Inſt. 145.
1 Hale 262.
1 Leon. 295.
C. Jac. 65.
3 Ruſh. Coll. 31.

Sect. 6. As to the ſecond point, *viz.* How bribery is
niſhable; it is ſaid, That at common law, bribery in a ju
in relation to a cauſe depending before him, was looked up
an offence of ſo heinous a nature, that it was ſometimes puni
as high treaſon before the 25 Edw. 3. and at this day it is c
tainly a very high offence, and puniſhable, not only with the
feiture of the offender's office of juſtice, but alſo with fine, im
ſonment, &c.

3 Inſt. 148.
(2) This was the caſe of the Earl of Middleſex, who had been raiſed by Buckingham's intereſt from the rank of a London merchant, to be lord high treaſurer of England, but having incurred the diſpleaſure of his patron, the favourite vowed revenge, and employed all his c with the commons to procure the impeachment of the treaſurer; but the charges a him were neither numerous nor important, the whole meaſure very diſſatisfactory t king, and the fine was remitted upon the acceſſion of Charles the firſt. Parl. Hiſt. 6. p. 191.

Sect. 7. Alſo all the other above mentioned kinds of brib
taken in a large ſenſe, ſeem to be puniſhable with fine and
priſonment, &c. And in the time of king James the Firſt,
earl of M. lord high treaſurer of England, being impeache
the commons for refuſing to hear petitions referred to him
the king, till he had received great bribes, and for other
like miſdemeanours was, by ſentence of the lords, depriv
all his offices, and diſabled to have any for the future, or
in the parliament, and was fined fifty thouſand pounds, and
priſoned during the king's pleaſure. (2)

AN ATTEMPT to induce a man to adviſe the king, under the influence of a b is criminal, though never carried into execution. 4 Burr. 2499. Offering money privy counſellor to procure the reverſion of an office in the gift of the crown, has adjudged a miſdemeanor, and puniſhable by information. Rex v. Vaughan.

(3) But if it appears to be a void election, an action for this penalty is not maintainable. L. Ray. 904.

† *Sect.* 8. And it is enacted by 7 & 8 Will. 3. c. 7. "T
"all contracts, promiſes, bonds, and ſecurities whatſoe
"made or given to procure any return of any member to
"parliament, or thing relating thereunto, ſhall be adjudged v
"and that whoever makes or gives ſuch contract, ſecurity,
"miſe, or bond, or any gift or reward, to procure a falſe
"double return, ſhall forfeit 300l. One third to the ki
"one third to the poor; one third to the informer; to be r
"vered by action or information." (3)

3 Burr. 1270.
1304.
1 Black. 351,
356, 524, 541.

† *Sect.* 9. And it is further enacted by 2 Geo. 2. c.
"That if any perſon having, or claiming a right to
"at any election for members of parliament, ſhall
"receive, or take any money, or other reward by
"of gift, loan, or other device, or agree or contract
"any money, gift, office, employment, or other re
"whatſoever, to give his vote, or to refuſe or forbea
"give his vote in any ſuch election, or if any perſon
"him

ſelf, or any perſon employed by him, doth or ſhall by any or reward, or by any promiſe, agreement, or ſecurity for gift or reward, corrupt or procure any perſon or perſons, ive his or their vote or votes, or to forbear (a) to give his or r votes in any ſuch election, ſuch offender ſhall for every nce, forfeit 500 l. together with full coſts of ſuit, by action nformation at Weſtminſter. And any perſon offending in of the ſaid caſes, from and after judgment has been ſo ob- ed againſt him, or by ſummary action, or proſecution, or g any otherwiſe lawfully convicted thereof, ſhall be for r diſabled to vote in any election for members of parliament, o hold, exerciſe, or enjoy any office, or franchiſe as a mem- of any city, borough, town corporate, or cinque port, as he was dead."

(a) It is not neceſſary that the party ſhould actually forbear in conſequence of the procurement. 3 Wilſ. 292.

2. 10. But it is further enacted, "That if ſuch offender, hin twelve months next after ſuch election, diſcover any er offender ſo that he be thereupon convicted, ſuch offender diſcovering and not having been before that time convicted of offence againſt this act, ſhall be indemnified and diſcharged m all penalties and diſabilities which he ſhall then have in- rred by any offence againſt this act. Provided the proſecu- ns be commenced within two years, which commencement ll be (by 9 Geo. 2. c. 38.) the actual arreſt, ſummons, or rvice of proceſs." (4)

) This ſtatute does not take away the common law proceſs by indictment, or infor- n for bribery at elections for members of parliament. But, as the offender would ually liable to the penalties of the ſtatute, vide 1 Black. 524, the court will not grant formation until the two years are expired, 3 Burr. 1335, except in particular caſes, ded on particular reaſons. 3 Burr. 1340. And it ſeems as if the court would adjourn g ſentence on a conviction *by indictment*, on the defendant's entering into a recogni- e to appear on the day when the time limited for bringing the qui tam action will re, 3 Burr. 1359; but the court will not, after that time has elapſed, prolong the ment on account of the defendant's having indicted one of the witneſſes, upon whoſe mony he was convicted, becauſe being ſo much intereſted he could not be admitted a eſs. 3 Burr. 1388. 1 Black. 404. Nor will they ſtay the judgment on the poſtea n action for this injury, on affidavits that the defendant is a diſcoverer. 3 Wilſon 35. will they grant a new trial, becauſe a witneſs was *particeps criminis*. Sayer 290. But will grant a new trial, if upon a ſpecial caſe, the jury have not found who was the diſcoverer, although they find that the defendant produced a judgment by which it eared that he had obtained a verdict againſt a third perſon upon this act; for it does follow concluſively, that the perſon who obtains the verdict is neceſſarily the diſcoverer, rr. 2504, 2469. And it has been determined, that the perſon who makes an affidavit he fact upon which another obtains a verdict, is the true diſcoverer. 4 Burr. 2286. although a verdict is not a conviction until it be compleated by a judgment, yet, after ſo compleated, which the court will grant leave to do, it will relate back to the time the original diſcovery. Ibid. 1 Black. 665. Vide alſo the Cricklade caſe, one volume, vo, publiſhed by E. Brooke, 1785. Alſo 22 Geo. 3. c. 31.

f the elector is bribed by a friend of the canditate's, and exchanges a note to inſure vote, it is bribery within the act, although the elector voted for the oppoſite party. rr. 1235. 1 Black. 317. And ſo alſo is laying a wager with the voter that he does vote for a particular candidate. Loft. 552. vide alſo Allen v. Hume, Mich. 26 Geo. And by giving the elector money, he admits his right to vote, and ſhall not be per- ted afterwards to controvert it. 3 Burr. 1586. Nor is it neceſſary that the candidate uld have declared himſelf at the time the bribe was given, becauſe aſking a vote for , under the title of the candidate's friend, makes him a candidate. Coomb. v. Pitt.

5 Geo.

5 Geo. 3. 1 Black. 523. Nor is it neceſſary that the perſon bribed ſhould actually have a right to vote. 3 Wilſ. 35. But in an action the declaration muſt ſtate what the defendant received or took as a reward, and whether money, or what particular ſpecies of reward, and not indefinitely and disjunctively; "that he took a gift or reward," and upon a criminal charge, this defect is not helped by verdict, 4 Burr. 2471.

CHAPTER THE SIXTY-EIGHTH.

OF EXTORTION.

IN treating of Extortion, I ſhall conſider, What ſhall be Extortion; How it ſhall be puniſhed.

Co. Lit. 368. 10 Coke 102. 3 Inſt. 149. C. Car. 438, 448. Hutton 53. 3 Inſt. 68. 1 Ray. 149. 11 Mod. 80, 137. Salkeld 382.

Sect. 1. As to the firſt point it is ſaid, That extortion in large ſenſe ſignifies any oppreſſion under colour of right; but in a ſtrict ſenſe, it ſignifies the taking of money by any officer colour of his office, either where none at all is due, or more much is due, or where it is not yet due.

2 Inſt. 209. Co. Lit. 368. 42 Ed. 3, 4, 5. 2 R. Abr. 266. Cro. Cir. 250. 4 Inſt. 274. Moor 523. 2 Inſt. 209.

Sect. 2. It is ſaid, That at the common law, which was confirmed by the ſtatute of Weſtminſter, 1. c. 26. it was enacted for any ſheriff or other miniſter of the king, whoſe office did in any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, to take any reward whatſoever for doing his office, except what he received from the king. And ſurely this was a moſt excellent inſtitution, highly tending to promote the honour of the king, and the eaſe of the people, and hath been always thought to conduce ſo much to the public good, that all preſcriptions whatſoever which have been contrary to it have been holden to be void; and upon this ground it hath been reſolved, That the preſcription, by virtue whereof the clerk of the market claimed certain fees for the view and examination of all weights and meaſures, &c. was merely void.

21 H. 7. 17. 2 Inſt. 210. 2 Inſt. 176. S. P. C. 49.

Sect. 3. But it hath been holden, That the fee of two pence, commonly called the bar-fee, which hath been time out of mind, by the ſheriff, of every priſoner who is quitted, alſo the fee of one penny, which was claimed by the coroner of every viſne, when he came before the juſtices in eyre are not within the meaning of the ſtatute, becauſe they are demanded by the ſheriff or coroner for doing any thing relating to their offices, but claimed as perquiſites of right belonging to them, whether they do any thing or not. But there ſeemeth to be no neceſſity for this diſtinction, for it cannot be intended by the meaning of the ſtatute to reſtrain the courts of juſtice in what

egrity the law always repoſes the higheſt confidence, from al- 21 H. 7. 17.
ving reaſonable fees for the labour and attendance of their Co. Lit. 368.
cers. For the chief danger of oppreſſion is from officers being
at their liberty to ſet their own rates on their labour, and
ke their own demands; but there cannot be ſo much fear of
ſe abuſes, while they are reſtrained to known and ſtated fees,
led by the diſcretion of the courts which will not ſuffer them
be exceeded, without the higheſt reſentment. (1)

1) For the fees allowed to the ſeveral officers, vide 3 Com. Dig. 323, 324. 1 Modern
11 Modern 89. Ld. Ray. 4. 103. 9 and 10 Will. 3. c. 41. 29 Eliz. c. 4. 3 Jac.
7. 10 & 11 Will. 3. c. 23. ſ. 8. 3 Geo. 1. c. 15. 17 Geo. 3. c. 26. ſ. 6. Cro.
253.

Sect. 4. Alſo it having been found by experience, That ge-
ally it is vain to expect that any officers who depend upon a
own fixed ſalary, without having any immediate benefit from
particular inſtances of their duty, ſhould be ſo ready in un-
taking, or diligent in executing them, as they would be, if
y were to have a preſent advantage from them; it hath been
ught expedient to permit them to take certain fees in many 3 Inſt. 149.
es, but it is certain that they are guilty of extortion, if they 2 Inſt. 210.
e any thing more. Alſo it hath been reſolved, That a pro- Co. Lit. 368.
ſe to pay them money for the doing of a thing which the law 1 R. Abr. 6, 26,
ll not ſuffer them to take any thing for, is merely void, how- 41.
er freely and voluntarily it may appear to have been made; 1 Rol. 313.
if once it ſhould be allowed, That ſuch promiſes could main- Noy 76.
n an action, the people would quickly be given to underſtand 1 Jones 65.
w kindly they would be taken, and happy would that man be C. Eliz. 654.
o could have his buſineſs well done without them (2) Moor 468, 523.
C. Jac. 103.

(2) It is extortion to oblige an executor to prove a will in the biſhop's court, and to
e fees thereon, knowing the ſame to have been proved in the prerogative court. Strange
. Or in a ſheriff's officer to admit a priſoner to bail, upon an agreement to receive a
tain ſum, when the priſoner ſhould pay to a third perſon another ſum of money. 2
r. 924. To arreſt a man in order to obtain a releaſe from him. 8 Mod. 189. In a
oler to obtain money from his priſoner by any colourable means. 8 Mod. 226. Stra.
5. Or in a church warden *colore officii*. 1 Sid. 307. In a miller, if he takes more for
than is due by cuſtom. Ld. Ray 149. Or a commiſſary for abſolution. 3 Leo. 268.
a ferryman more for his ferry. 4 Mod. 101. Or to ſeize upon the place where a fair
held; and by building ſtalls, to force an exorbitant price for them. Ld. Ray. 150.
in an under ſheriff to refuſe to execute a proceſs till his fees are paid. Salk. 330. Or
take a bond for his fee before execution is ſued out. Hutt. 53. Or for a coroner to
uſe his view until his fees be paid. 3 Inſt. 149.

Sect. 5. As to the ſecond point, *viz.* How extortion ſhall 11 Mod. 82.
e puniſhed; there is no doubt, but that at common law it is 2 R. Abr. 32.
verely puniſhable at the king's ſuit, by fine and impriſon- 33, 75.
ent; and alſo by a removal from the office, in the execu- Raym. 315.
on whereof it was committed. Alſo extortion in ſheriffs, 2 Inſt. 209.
cheators bailiffs, gaoler, the king's clerk of the market, and 3 Leo. 268.
ther inferior miniſters and officers of the king, whoſe offices 3 Edw. 1. c. 26.
1 Strange 74.

do

do any way concern the administration or execution of ju
or the common good of the subject, or for the king's ser
hath a farther additional punishment by the above mentio
statute of Westminster, by which it is enacted, "That no
"riff, nor other king's officer, shall take any reward to do
"office, but shall be paid of that which they take of the
"and that he who so doth, shall yield twice as much,
"shall be punished at the king's pleasure." (3)

(3) And an action lies to recover the double value. 3 Com. Dig. 323. But the ind
ment which may be brought at the sessions, Str. 73, or information, must state the
particularly. 3 Leo. 268. 25 Edw. 3. st. 3. c. 9. 11 Mod. 80. It must also spe
the time when the offence was committed. 4 Mod. 101, 103. But although it be
ed to be stated for what the thing extorted was taken, yet it is good after verdict, Sid
And, in general, the King's Bench will oblige the party to demur to a defective ind
ment for extortion, 5 Mod. 13. And whatever may be the sum, if there is proof
of a shilling taken, the defendant is guilty; for the taking is the offence, and not
contract. L. Ray. 149. And he also who assists is equally guilty, for there are no
cessaries in extortion. Str. 73. Extortion may be laid in any county, by the 31 Eliz.
5. Sed vide 2 Hawkins. ch. 26. s. 50.

CHAPTER THE SIXTY-NINTH.

OF PERJURY.

OFFENCES under the degree of capital, more immed
ately against the subject, not amounting to an actual d
turbance of the peace, which may be committed by private p
sons, without any relation to an office; are either, Such as
infamous, and grosly scandalous, proceeding from principles
downright dishonesty, malice or faction. Or, Such as are
an inferior nature, and neither infamous, nor grosly scandalo

Those of the first kind seem to be reducible to the follow
heads: Perjury, and subornation of perjury. Forgery. Che
Conspiracy. Keeping of a bawdy-house. And Libels.

And first of perjury, and subornation of perjury, of both wh
there are two kinds. First, by the common law. Second
By statute.

PERJURY, by the common law, seemeth to be a wilful fa
oath, by one who being lawfully required to depose the tru
in any proceeding in a course of justice, swears absolutely i
matter of some consequence to the point in question, whether
be believed or not.

Com. Dig. tit. Jus. of Peace. B. 102.

For the better understanding whereof, I shall consider the owing particulars:

First, How far this offence must be wilful. Secondly, In what d of proceedings it may be committed. Thirdly, In what es an oath may be said to be so far lawfully administered, that who takes it may become guilty of perjury. Fourthly, In at kind of oaths perjury may be committed. Fifthly, How the oath must be false. Sixthly, Whether the matter of the h must be absolute. Seventhly, How far things sworn ought be material to the point in question. Eighthly. How far the se oath must be credited.

Sect. 2. As to the first particular, *viz.* How far this offence ust be wilful; it seemeth that no one ought to be found guilty reof without clear proof, That the false oath alledged against l was taken with some degree of deliberation; for if upon the hole circumstances of the case it shall appear probable, That was owing rather to the weakness than perverseness of the par- , as where it was occasioned by surprize, or inadvertency, or a istake of the true state of the question, it cannot but be hard to ake it amount to voluntary and corrupt perjury, which is of all imes whatsoever the most infamous and detestable.

5 Mod. 350. 10 Mod. 195. Salkeld 513. 3 Inst. 163.

Sect. 3. As to the second particular, *viz.* In what kind of roceedings this offence may be committed. It seems to be clear- agreed, That all such false oaths, as are taken before those ho are any ways intrusted with the administration of public stice, in relation to any matter before them in debate, are pro- rly perj ries; and it seems to have been holden by some, that ll such false oaths as are taken before persons authorized by the ing to examine witnesses in relation to any matter whatsoever, herein his honour or interest are concerned, are also punishable perjuries. And surely there can be no offence of this nature hich will not justly deserve a public prosecution, inasmuch as if it should once prevail, it would make it impossible to have any w whatsoever duly executed, and expose the lives, liberties, and roperties, of the most innocent, to the mercy of the greatest illains. And therefore it hath been holden, That not only such ersons are indictable for perjury, who take a false oath in a court f record, upon an issue therein joined, but also all those who orswear themselves in a matter judicially depending before any ourt of (a) equity, or spiritual (b) court, or any other (c) lawful ourt, whether the proceedings therein be of record or ot (d) or whether they concern the interest of the king

C. Eliz. 168. 169. Noy 128. 2 R. Abr. 257. Hobart 62.

(a) C. Eliz. 907. Skinner 327. 1 Sid. 418. 1 R. Abr. 40. 5 Mod 348.

(b) C. Eliz. 185, 609. 2 Roll. 410. 1 R. Abr. 40. 1 Leon. 131. Con. Dy 243. (c) 2 R. Abr. 257. 1 R. Abr. 41. Winch. 3 5 Mod. 348. Hutt. 34. 1 Mod. 55. Yelv. 27. C. Eliz. 297, 342, 348, 905. (d) 12 Co. 101. C. Jac. 212. Con. C. Jac. 220. 3 Inst. 164. Vide sect. 18.

or ſubject. And it is ſaid to be no way material, whether ſuch ſalſe oath be taken in the face of a court, or perſons authorized by it to examine a matter, the knowledge whereof is neceſſary (e) 1 R. Abr. 39. for the right determination of a cauſe; and (e) therefore, That a ſalſe oath before a ſheriff, upon a writ of enquiry of damages, is as much puniſhable as if it were taken before the court trial of the cauſe.

Alſo it ſeemeth, That any falſe oath is puniſhable, as perjury, which tends to miſlead the court in any of their proceedings relating to a matter judicially before them, though it in no way affect the principal judgment which is to be given in the (f) C. Car. 146. cauſe; as where a (f) perſon who offers himſelf to be bail for another knowingly, and wilfully ſwears that his ſubſtance is greater than it is. Alſo it hath been reſolved, That not only ſuch oaths as are taken upon judicial proceedings, but alſo all ſuch as any way tend to abuſe the adminiſtration of juſtice, are properly perjuries; as where one (g) takes a falſe oath before (g) 2 Roll. 410. 2 R. Abr. 77. juſtice of peace, in order to induce him to compel another to find ſureties for the peace, &c. or where a perſon forſwears himſelf (h) Noy 100. Moor 627. before commiſſioners appointed by the king to enquire of the forfeitures of his tenants eſtates, &c. whereby he makes them liable to be ſeized by exchequer proceſs. Alſo it hath been ſaid, That a falſe oath is puniſhable as perjury, in ſome caſes, where in the king's honour or intereſt is concerned, though it do not concern the adminiſtration of juſtice; as where one ſwears a falſe oath concerning the poſſeſſion of lands, before commiſſioners appointed by the king to inquire of ſuch perſons whoſe titles to the lands in their poſſeſſion are defective, and want the ſupply of the king's patents: And this is certainly an offence of a very heinous nature, (i) tending not only to fruſtrate the king's gracious purpoſe, but to abuſe his goodneſs by inducing him to grant his patents to thoſe who are out of poſſeſſion, and no way within the intent of the commiſſion, which, inſtead of quieting the poſſeſſions of the ſubjects, cannot but end in the greateſt diſturbance of them. (i) Hobart 62.

However it ſeemeth certain, That no oath whatſoever in a mere private matter, howſoever wilful or malicious it may be, is puniſhable as perjury in a criminal proſecution; for private injuries are left to be redreſſed by private actions; and upon this ground it hath been holden, That a falſe oath taken by one upon the making of a bargain, that the thing ſold is his own, is not puniſhable as perjury.—Alſo from what hath been ſaid it appears, That the notion of perjury is confined to ſuch publick oaths only as affirm or deny ſome matter of fact, contrary to the knowledge of the party; and therefore, That it doth not extend to any promiſſory oaths whatſoever; from which

Con. 1 Ven. 369. 370.

1 R. Abr. 257.

clear

early follows, That no officer publick or private, who neglects execute his office in pursuance of his oath, or acts contrary to e purport of it, is indictable for perjury, in respect of such ath; yet it is certain, That his offence is highly aggravated by eing contrary to his oath, and therefore, that he is liable to e severer fine on that account. 2 R. Abr. 257. 3 Inst. 166.

Sect. 4. As to the third particular, *viz.* In what cases an ath may be said to be so far lawfully administered, that he ho takes it may become guilty of perjury by swearing falsly. seemeth clear, That no oath whatsoever taken before (a) per- ons acting merely in a private (b) capacity, or (c) before those ho take upon them to administer oaths of a publick nature, ithout legal authority for their so doing, or (d) before those who re legally authorized to administer some kinds of oaths, but not hose which happen to be taken before them, or even (e) before hose who take upon them to administer justice by virtue of an uthority seemingly colourable, but in truth unwarranted and nerely void, can ever amount to perjuries in the eye of the law, ecause they are of no manner of force, but are altogether idle. 1)

(a) 2 R. Abr. 257. 3 Inst. 165. Yelv. 72.
(b) Cro. El. 169.
(c) 1 Sid. 274. 2 R. Abr. 257. Latch. 38. 132.
(d) Yelv. 111. 3 Inst. 166. See 4 Inst. 97. 29 Car. 2. 25. 2 Roll. 427. 4 Inst. 278.
(e) Sid. 148.
(1) *Qu.* If any magistrate is

ustifiable in taking a voluntary affidavit in any extrajudicial matter. Vide 15 Geo. 3. 39. 3 Burn. 244.

And from the same ground it seemeth also clearly to follow, That no false oath in an affidavit, made before persons falsly pretending to be authorized by a court of justice to take affidavits in relation to matters depending before such court, can properly be called perjury, because no affidavit, is any way regarded, unless it be made before persons legally intrusted with a power to take it, as being both of sufficient ability to ask all proper questions of the party who shall make such affidavit, and also of such integrity as not to suffer any thing to be inserted therein, to the truth whereof the party hath not sworn. And though it may be said, That an affidavit taken before persons falsly pretending to be commissioned for such purpose by the courts of justice, doth directly tend to impose upon such courts, and may possibly happen through surprize to be read, and may also in its own nature be altogether heinous, as if it had been made before persons regularly impowered to take it; yet inasmuch as it is of itself of no manner of validity, and is no otherwise regarded, than as it hath the appearance of being sworn before persons legally commissioned, without which it would have no manner of credit, it seemeth that offences of this nature are most properly punished by severely chastising those who usurp such an authority of administering of oaths, without any legal warrant. 4 Comm. 157. 3 Inst. 165.

However, it hath been adjudged, That a falſe oath, taken before perſons, who, having been commiſſioned to examine witneſſes, happen to proceed after the demiſe of the king who gave them their commiſſion, and before notice thereof may be puniſhed as perjury; for it would be of the utmoſt ill conſequence to make ſuch proceedings void; and therefore though all ſuch commiſſions be in ſtrictneſs legally determined by the demiſe of the king, who gave them, without any notice; yet for the neceſſity of the caſe, whatever is done under them before ſuch notice muſt be ſuffered to ſtand good; for otherwiſe the moſt innocent and moſt deſerving ſubjects would be unavoidably expoſed to numberleſs proſecutions for doing their duties, without any colour of a fault. And *Quære*, Whether a perjury in a court whoſe proceedings are afterwards reverſed by error, may not ſtill be puniſhed as perjury, notwithſtanding ſuch reverſal. (a)

C. Car. 97, 98, 99.

1 Ven. 181.

(a) In the caſe of the King v. Alford, Summer aſſizes for Somerſet, 1776, the defendant was indicted for perjury in a cauſe tried at the aſſizes before Mr. Juſtice Willes. The caption of the indictment recited the names of the judges who were in the commiſſion, and charged, "That at the ſaid trial, before the honourable Edward Willes *one of the juſtices* "aforeſaid, the defendant took his corporal oath, &c. He the ſaid Edward Willes the "and there *having competent authority to adminiſter an oath* to the defendant in that behalf" the priſoner was found guilty. But Mr. Baron Eyre, who tried the cauſe, doubted of the authority of *one commiſſioner* to adminiſter the oath; the record of *niſi prius*, which was read in evidence, ſtating, in the uſual form, that the trial was before both the judges and therefore, Another doubt aroſe whether the evidence maintained the indictment. On reference, the firſt Hilary term, 1777, the judges were unanimous, that either of the judges may adminiſter the oath; conſequently there was no variance, and the conviction good. M. S.

Sect. 5. As to the fourth particular, *viz.* In what kind of oaths perjury may be committed. It ſeemeth clear, That a man may be in danger of being guilty thereof, not only in reſpect of a falſe oath, taken by him as a witneſs for another, but alſo in reſpect of a falſe oath taken by him in his own cauſe, either in anſwer to queſtions put to him in a court of (a) law or (b) equity, having power to purge him upon oath concerning his knowledge of the matters in diſpute, or in his (c) affidavit concerning ſome collateral matter, wherein the parties own oaths are allowed to be taken. But it ſeems; That a juror who gives a verdict contrary to manifeſt evidence, is not properly guilty of perjury within the above mentioned deſcription becauſe he is not ſworn to depoſe the truth, but only to give a true judgment upon the depoſition of others, and in many caſes is not puniſhable at all *in foro humano*, as ſhall be ſet forth more at large in the chapter of conſpiracy.

(a) 1 R. Abr. 40. 83. C. Eliz. 609.

(b) 1 Leon. 127. C. Eliz. 135. 905. 1 R. Abr. 40. 69. 1 Sid. 244.

(c) 1 Roll. 79. Noy 128. 5 Modern 348. Moor 656. 2 Keble 452. 2 R. Abr. 77.

Sect. 6. As to the fifth particular, *viz.* How far the matter of the oath which may amount to perjury, muſt be falſe. It (d) is ſaid not to be material whether the fact which is ſworn, be in itſelf true or falſe; for howſoever the thing ſworn may happen to prove agreeable to the truth, yet if

(d) Palm. 294. Hetley 97. 2 R. Abr. 77. 3 Inſt. 166. Com. 3. Mod. 222.

were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inaſmuch as he wilfully ſwears, That he knows a thing to be true, which at the ſame time he knows nothing of and impudently endeavours to induce thoſe before whom he ſwears to proceed upon the credit of a diſpoſition, which any ſtranger might make as well as he.

Sect. 7. As to the ſixth particular, *viz.* How far the oath muſt be abſolute. It is ſaid, That no oath ſhall amount to perjury unleſs it be ſworn abſolutely and directly; and therefore, That he who ſwears a thing according as he thinks, remembers, or believes, cannot in reſpect of ſuch an oath be found guilty of perjury. 3 Inſt. 166.

Sect. 8. As to the ſeventh particular, *viz.* How far the thing ſworn ought to be material to the point in queſtion? It ſeemeth clear, That if the oath for which a man is indicted of perjury, be wholly foreign from that purpoſe, or altogether immaterial, and neither any way pertinent to the matter in queſtion, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the ſubſtantial part of the evidence, it cannot amount to perjury, becauſe it is merely idle and inſignificant. As if upon a trial, in which the queſtion is, whether ſuch a one was *compos* or not, a witneſs introduces his evidence by giving a hiſtory of a journey which he took to ſee the party, and happens to ſwear falſly in relation to ſome of the circumſtances of the journey. Alſo it hath been adjudged, That where a witneſs being aſked by a judge, whether *A.* brought a certain number of ſheep from one town to another altogether? anſwered, That he did ſo, where in truth *A.* did not bring them all together, but part at one time and part at another, yet ſuch witneſs was not guilty of perjury, becauſe the ſubſtance of the queſtion was, whether *A.* did bring them at all or not, and that manner of bringing them was only a circumſtance. And upon the ſame ground it is ſaid to have been adjudged, That where a witneſs being aſked, whether ſuch a ſum of money were paid for two things in controverſy between the parties? anſwered, That it was, where in truth it was paid only for one of them by agreement, ſuch witneſs ought not to be puniſhed for perjury; becauſe as the caſe was it was no way material whether it were paid for one or both. Alſo it is ſaid to have been reſolved, That a witneſs who ſwore that one drew his dagger and beat and wounded *J. S.* where in truth he beat him with a ſtaff, was not guilty of perjury, becauſe the beating only was material. 1 Freem. 506. 1 Sid. 274. Vide Inf. f. 22. Aleyn 79. 1 R. Abr. 141, 78. C. Eliz. 500. Salkeld 514. Noy 36. 2 Roll. 145. C. Car. 521. Hobart 53. Carth. 422. 5 Mod. 345, 348. 3 Inſt. 164. 2 Roll. 41, 369. 2 Roll. 42. Hetley 97.

But perhaps in all theſe caſes it ought to be intended, That the queſtion was put in ſuch a manner, that the witneſs might reaſonably

reaſonably apprehend that the ſole deſign of putting it, was to be informed of the ſubſtantial part of it, which might induce him thro' inadvertency to take no notice of the circumſtantial part, and give a general anſwer to the ſubſtantial; for otherwiſe, if it appear plainly, That the ſcope of the queſtion was to ſift him as to his knowledge of the ſubſtance, by examining him ſtrictly concerning the circumſtances, and he give a particular and diſtinct account of the circumſtances, which afterwards appears to be falſe; ſurely he cannot but be guilty of perjury, inaſmuch as nothing can be more apt to incline a jury to give credit to the ſubſtantial part of a man's evidence, than his appearing to have an exact and particular knowledge of all the circumſtances relating to it. And upon theſe grounds, I cannot but think the opinion of thoſe judges very reaſonable, who held, That a witneſs was guilty of perjury, who in an action of treſpaſs for breaking the plaintiff's cloſe, and ſpoiling it with ſheep, depoſed that he ſaw thirty or forty ſheep in the ſaid cloſe, and that he knew them to be the defendant's, becauſe they were marked with ſuch a mark, which he knew to be the defendant's mark, where in truth the defendants never uſed ſuch a mark; for the giving ſuch a ſpecial reaſon for his remembrance could not but make his teſtimony more credible than it would have been without it; and though it ſignified nothing to the merits of the cauſe, whether the ſheep had any mark at all or not, yet inaſmuch as the aſſigning ſuch a circumſtance in a thing immaterial had ſuch a direct tendency to corroborate the evidence concerning what was moſt material, and conſequently was equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuſe the adminiſtration of juſtice, as if the matter ſworn had been the very point in iſſue, there doth not ſeem to be any reaſon why it ſhould not be equally puniſhable. But I cannot find this matter any where thoroughly ſettled or debated, and therefore ſhall leave it to every man's own judgment, which from the conſideration of the circumſtances of each particular caſe, may generally without any great difficulty diſcern whether the matter in which perjury is aſſigned, were wholly impertinent, idle, and inſignificant, or not, which ſeems to be the beſt rule for determining whether it be puniſhable as perjury or not.

2 Roll. 368. Palmer 382.

But it is ſaid in *Siderfin*, ſpeaking as I ſuppoſe of an anſwer in chancery, that a man may be guilty of perjury at the common law by ſwearing a thing not material. But ſurely this ought not to be underſtood in ſo great a latitude, as if it were meant that every falſity in ſuch an anſwer muſt needs be perjury, howſoever foreign, circumſtantial and trivial the point where it is aſſigned may be, which is directly contrary to what ſeems to be clearly taken for granted in other books. And therefore

1 Siderfin 274.

perha

aps where it is said that a man may be guilty of perjury in ng not material, no more may be meant, but that he may well guilty thereof, by answering to a matter not charged e bill, as by answering to the matters therein contained, h may alone be said to be material, because the defendant t obliged in his answer to take notice of any thing else. Or perhaps the meaning may be, That in a prosecution for per- at common law, setting forth a false oath in such an answer, ring to the thing said to be in variance, the falsity shall be nded *prima facie* to have been some way material in the cause, ss the contrary be proved by the other side: Whereas in all ecutions upon the statute, it is necessary expressly to shew in t manner the false oath is material to the cause in question, use that statute, extending only to such perjuries whereby e person is grieved, cannot maintain a prosecution which not bring the case within the purview of it, by shewing some one was grieved by the injury complained of, which could not be, unless the thing sworn were some way material. wever it seemeth to be clear, That a man may as well be y of perjury by a false oath tending to extenuate or aggra- the damages, as by an oath which is direct to the fact in e. (3)

Vide inf. f. 23.

C. Jac. 212. 12 Co. 101. 2 Leon. 198.

(3) It is not necessary that it appear to what degree the point in which a man is per- d, was material to the issue: for if it is but circumstantially material, it will be per- . Ld. Raymond 258. Much less is it necessary that the evidence be sufficient for the ntiff to recover upon; for in the nature of the thing an evidence may be very material, yet it may not be full enough to prove directly the point in question. Ld. Raymond . And it is incumbent on the prosecutor to prove the materiality of the perjury. B. 1784. p. 305.

Sect. 9. As to the eighth particular, *viz.* How far the false h must be credited, It hath been holden not to be material on an indictment of perjury at common law, whether the e oath were at all credited, (4) or whether the party in whose judice it was intended, were in the event any way aggrieved or not, inasmuch as this is not a prosecution grounded on damage to the party, but on the abuse of *public justice*,

3 Leon. 230. 2 Leon. 211.

(4) But on the trial the oath will be taken as true, until it be disproved; and therefore convict a man of perjury, a probable, credible witness is not enough; for the evi- ce must be strong, clear, and more numerous on the part of the prosecution than the dence on the other side. Therefore, the law will not permit a man to be convicted of jury, unless there are two witnesses at least. O. B. 1786. p. 812. 10 Modern 195. r shall the party prejudiced by the perjury be admitted as a witness to prove it. L. ymond 396.

Sect. 10. SUBORNATION of perjury by the common law, ems to be an offence in procuring a man to take a false oath mounting to perjury, who actually takes such oath; but it emeth clear, That if the person incited to take such an oath, o not actually take it, the person by whom he was so incited

1 R. Abr. 41, 57, 79 Yelv. 72. C. Jac. f. 58. C. Car. 337. 2 Keb. 399.

is

is not guilty of ſubornation of perjury; yet it is certain, T
3 Mod. 122. Farres 101. he is liable to be puniſhed not only by fine, but alſo by infa
Vide p. 328. corporal puniſhment.
For a further puniſhment inflicted by 2 Geo. 2 c. 25. Vide alſo p. 335. ſect. 29.

Of perjury by 5 Eliz. c. 9.

Sect. 11. Thus far of perjury, and ſubornation of perj
by the common law. And now I ſhall proceed to examine
what manner theſe offences are reſtrained by ſtatute; as to wh
it is to be obſerved, that it is enacted by 5 Eliz. c 9. "T
" whoever ſhall unlawfully and corruptly procure any witn
" or witneſſes by letters, rewards, promiſes, or by any o
" ſiniſter and unlawful labour or means whatſoever, to com
" any wilful and corrupt perjury, in any matter or cauſe wha
„ ever, depending in ſuit and variance, by any writ, acti
„ bill, complaint, or information, in any wiſe concerning
„ lands, tenements, or hereditaments, or goods, chattels, de
„ or damages, in any of the king's courts of Chancery, Wh
„ hall, or elſewhere, within any of the king's dominions of E
„ land or Wales, or the marches of the ſame, where any per
„ or perſons ſhall have authority by virtue of the king's co
" miſſion, patent, or writ, to hold plea of land, or to exami
" hear, or determine, any title of lands or any matter
" witneſſes concerning the title, right, or intereſts of any la
" or tenements, or hereditaments, or in any of the king's co
" of record, or in any leet, view, or frank-pledge or law-d
" ancient demeſne-court, hundred-court, court-baron, or
" the court or courts of Stannary in the counties of Devon
" Cornwal, or ſhall unlawfully and corruptly procure or
" born any witneſs or witneſſes, who ſhall be ſworn to teſt
" *in perpetuam rei memoriam*, ſhall for ſuch offence, being the
" of lawfully convicted or attainted, forfeit the ſum of fo
" pounds, And if any ſuch offender ſo being convicted or
" tainted, ſhall not have any goods or chattels, lands, or
" ments to the value of forty pounds, that then every ſuch p
" ſon ſhall ſuffer impriſonment by the ſpace of one half y
" without bail or mainprize, and ſtand upon the pillory the ſp
" of one whole hour, in ſome market-town next adjoining to
" place where the offence was committed. in open market the
" or in the market town itſelf where the offence was comm
" ted."

Sect. 12. Alſo it is further enacted by the ſaid ſtatu
par. 5. " That no perſon being ſo convicted or attainte
" ſhall from thenceforth be received as a witneſs in a
" court of record, in any of the king's dominions
" England, Wales, or the marches of the ſame, till ſu
" judgment againſt him ſhall be be reverſed by attaint,
" otherwiſe; and that upon every ſuch reverſal, the pa
" griev

grieved shall recover damages against the party who did procure the said judgment so reversed to be first given, &c." See 1 Sid. 216.

Sect. 13. And it is farther enacted, par. 6. "That if any person or persons shall either by the subornation, unlawful procurement, sinister persuasions, or means of any other, or by their own act, consent or agreement, wilfully, and corruptly commit any manner of wilful perjury, by his or their deposition, in any of the courts before mentioned, or being examined *ad perpetuam rei memoriam*, That then every such offender being duly convicted or attainted, shall forfeit twenty pounds, and have imprisonment by the space of six months without bail or mainprize; and the oath of such an offender shall not from thenceforth be received in any court of record in England or Wales, until such judgment shall be reversed. &c. on which reversal the party grieved shall recover damages in the manner before mentioned."

And it is farther enacted, par. 7. "That if such offender shall not have goods or chattels to the value of twenty pounds, that then such person shall be set on the pillory in some market place within the shire, city or borough, where the offence shall be committed by the sheriff or his ministers, if it shall fortune to be without any city or town corporate, and if it happen to be within any such city or town corporate, then by the head officer of such city, &c. where he shall have both ears nailed, &c."

Sect. 14. And it is further enacted, par. 8, 9. "That one moiety of the said forfeiture shall be to the king, and the other moiety to such person as shall be grieved, hindered, or molested, by reason of any of the offences before mentioned, that will sue for the same, &c. and that as well the judge and judges of every such of the said courts where any such suits shall be and whereupon any such perjury shall be committed, as also the justices of assize and gaol-delivery, and justices of the peace at their quarter sessions, (5) both within the liberties and without, may enquire of, hear, and determine all offences against the said act."

(5) Prosecutions upon this statute, being more difficult than by indictment at common law, are very seldom brought, especially at the sessions; and at common law, justices of the peace have no jurisdiction over the offence. 2 Hawk. c. 8. s. 4. Strange, 1088—The safer and most usual mode therefore is by indictment at the Assizes, or in the King's Bench. 3 Burn. 294.

Sect. 15. But it is provided, par. 11. "That the said act shall no way extend to any spiritual, or ecclesiastical court, but that every such offender as shall offend in form as aforesaid, shall be punished by such usual and ordinary laws as are used in the said courts."

Sect.

Punishment of perjury.

Sect. 16. Also it is provided, par. 13. "That the ſ
"ſtatute ſhall not reſtrain the authority of any judge, having
"ſolute power to puniſh perjury before the making ther
"but that every ſuch judge may proceed in the puniſhme
"all offences, puniſhable before the making of the ſaid ſt
"in ſuch wiſe as they might have done, and uſed to do, t
"purpoſes, ſo that they ſet not upon the offender leſs puniſh
"that is contained in the ſaid act." From whence it ſeem
undoubtedly to follow, that the court of King's Bench, &c.
ceeding upon an indictment, or information of perjury, or ſub
nation of perjury at common law, may not only ſet a diſcre
nary fine on the offender, but alſo condemn him to the pill
without making any enquiry concerning the value of his land
goods,

Offenders may be tranſported. Vide infra ſect. 29. for the puniſhment of perſons convicted of perjury, &c. acting as attornies.

† And by 2 Geo. 2. c. 25. made perpetual, by 9 Geo. 2.
8. "Beſides the puniſhment already to be inflicted by law
"ſo great crimes, it ſhall be lawful for the cou or judge
"fore whom any perſon ſhall be convicted of wilful and corr
"perjury, or ſubornation of perjury, according to the laws
"in being, to order ſuch perſon to be ſent to ſome houſe of c
"rection within the ſame county, for a time not exceeding ſe
"years, there to be kept to hard labour during all the ſaid ti
"or otherwiſe to be tranſported for a term not exceeding ſe
"years, as the court ſhall think moſt proper."

But for the better underſtanding of the other parts of this
tute, I ſhall conſider the following particulars: Firſt, How
the very words of the ſtatute muſt be purſued in a proſecut
grounded thereon. Secondly, In what kind of oaths one m
incur the danger thereof. Thirdly, How far the falſe oath m
appear to have been prejudicial to ſome perſon.

2 Leon. 211. 214. Shower 190. C. El. 105. 143. Savil. 43. 3 Leon. 230. Hetly. 12. Holt. 534. Skinner 403.

Sect. 17. As to the firſt of theſe particulars it hath been h
den, That in every proſecution on this ſtatute the words ther
muſt be exactly purſued, and therefore that an indictment
action on the ſaid ſtatute, alledging that the defendant depo
ſuch a matter *falſo & deceptive*, or *falſo et corrupte*, or *falſo
voluntarie*, without expreſly ſaying, that he did it *voluntarie
corrupte*, is not good; and that ſuch a defect cannot be ſuppl
by adding the words *contra formam ſtatuti*, or concluding &
voluntarium & corruptum commiſit perjurium: Alſo it hath be
holden, That it is neceſſary expreſly to alledge that the defe
dant was ſworn. and therefore that it is not ſufficient to ſ
that *tacto per ſe ſacro evangelii falſo depoſuit*.

18. However it hath been reſolved, That it is not ne- 3 Bulſt. 147.
to ſhew whether the party, who is accuſed of perjury,
e the falſe oath through the ſubornation of another, or
t any ſuch ſubornation, notwithſtanding the words of the
are, "If any perſon either by the ſubornation, unlawful
urement, ſiniſter perſuaſion, or means of any other, or
heir own act, conſent, or agreement, commit wilful per-
, &c." for inaſmuch as there is no medium between the
anches of this diſtinction, ſo that all perjury whatſoever
eeds come within one of them; and it is no way material
which of them it doth come, it is a reaſonable expoſition
on the ſaid words as put into the ſtatute *ex abundanti*, ſee- Vid. ſup.
ey expreſs no more than the law muſt needs have implied C. 10. S. 8.
ut them; from whence it follows, That they operate no
than if they had not been expreſſed, and conſequently ſhall
blige the proſecutor neceſſarily to purſue them, which
put him under the difficulty not only of proving the per-
which alone is material, but alſo of ſhewing it to be
one of the branches of the ſaid diſtinction, which is no-
to the purpoſe.

7. 19. As to the ſecond of the above mentioned particu-
viz. In what kind of oaths one may incur the danger of
tatute, it hath been reſolved, That no one can be guilty
jury within the meaning thereof, in any caſe wherein a
may not poſſibly be guilty alſo of ſubornation of perjury
in the ſame ſtatute; for it is very reaſonable to give the
e ſtatute the ſame conſtruction; nor can it well be intended,
the makers thereof, who expreſly inflict a greater penalty
ubornation of perjury, than on the perjury itſelf, ſhould mean
xtend the purview of the law in relation to what they eſteemed
leſſer crime, farther than in relation to that which they eſ-
ed the greater; from whence it hath been argued and deter-
ed, That becauſe that part of the ſtatute, which concerns
rnation of perjury, extends only to ſubornation of perjury in
matters depending in ſuit by writ, action, bill, plaint, or in-
rmation, in any wiſe concerning lands, tenements, or he-
editaments, or goods, chattels, debts, or damages, &c."
efore the following clauſe concerning perjury itſelf, though
e penned in more general words, ſhall come under the 5 Co. 99.
e reſtriction. And from hence it clearly follows, That
perjury upon an *indictment or criminal information*, can bring
an within the danger of the ſtatute, becauſe they are omit-
in the abovementioned clauſe. Alſo upon this ground it C. Jac. 120.
ms eaſy to account for the judgment in *Price's caſe*, who
ng indicted for a perjury ſuppoſed to be committed by him
an information for the king, which as I ſuppoſe muſt be
ended to have been a criminal one, was diſcharged upon an
exception

exception taken to the indictment; but if the information w
3 Inſt. 164. on the ſaid perjury was ſuppoſed to have been committed,
been of a civil nature, I do not ſee any reaſon why it ſhoul
be as well within the meaning, as it ſeems to be expreſly w
in the words of the ſtatute; for ſurely the opinion, Tha
king cannot by indictment, which is his own proper ſuit,
niſh his own witneſs, who ſwears for him, cannot be agree
to law, becauſe however the purjury of a ſuch a witneſs
ſeem to tend to promote the king's intereſt in relation to
cauſe which happens to be in diſpute, yet certainly it is as
nous a crime in its own nature, and as much an abuſe to ju
and of the ſame ill conſequence to the publick, and conſeq
ly as worthy of the king's reſentment, as if it had been
againſt him.

But he is puniſhable for the ſame by indictment at common law. Burr. Manſf. 1189.

Sect. 20. Alſo it hath been reſolved, That this ſtatute
tends to no other perjury except that of a witneſs, not only
cauſe the clauſe concerning ſubornation, to which the ſubſeq
clauſe concerning perjury has a reference, relates to perjury
witneſſes only, but alſo becauſe the clauſe concerning per
mentions only perjury committed by perſons in their exami
ons, *ad perpetuam rei memoriam*, or elſe in their depoſition
ſome of the courts above mentioned, which in common ſp
are taken for ſuch oaths only as are taken by a witneſs; and f
hence it follows, That no one can come within the ſtatute
(a) C. Eliz. 148. 2 Leon. 201. Daliſon 84. Yelv. 120. reaſon of any falſe oath in an (a) anſwer to a bill in Chanc
(b) 2 R. Ab. 77. or in (b) ſwearing the peace againſt another, or in a (c)
(c) 2 Leon 201. ſentative made by him as homager of a court-baron, or by
(d) 1 Noy 7,108. Finch 450. ſon of a falſe (d) wager of law, or for taking a falſe oath
(e) Moor 627. fore (e) commiſſioners appointed by the king to make an inq
concerning his title to certain lands.

2 R. Ab. 77. 1 Roll 79. 3 Keble 345. *Sect.* 21. Alſo it hath been ſaid, That he who makes a f
affidavit againſt a man in a court of juſtice is not within
ſtatute. But perhaps the books wherein this opinion is hol
ought to be intended only of ſuch affidavits which no way re
to a cauſe depending in ſuit before ſuch court; for if they be
ſuch a nature, That either of the parties in variance be gri
ed, hindered, or moleſted in reſpect of their cauſe in ſuch c
by reaſon of the perjury; as where a trial is put off, or a ju
ment or execution ſet aſide upon a falſe affidavit; the offe
ſeems to be not only within the meaning of the ſtature,
alſo within the very letter of it, unleſs the words, witne
and depoſitions are confined to ſo ſtrict a ſignification, as
bear no kind of application to any other perſon or oaths,
Vide 2 Leon. 40 1 R. Ab. 30, 42. cept thoſe which are made uſe of upon the trial of
iſſue in queſtion, for which I cannot find any good auth
rity. However partly perhaps from this notion, and par
becau

ſe the ſtatute ſpeaks expreſly only of depoſitions in the
s above mentioned, it hath been queſtioned, Whether a
oath before a ſheriff upon a writ of enquiry of damages,
within the ſtatute or not? But if it be conſidered, That the
to whoſe prejudice ſuch a falſe oath is taken is as much
ieved by it, as if it had been taken in the very court, and
principal judgment of the cauſe depends upon ſuch an inqui-
and the depoſitions made before the ſheriff, may as properly
aid to be depoſitions in the court, by which the ſheriff is
miſſioned to take the inquiry, as depoſitions taken before
es of *niſi prius*, upon a trial of an iſſue joined in a ſupe-
court, which are undoubtedly within the meaning of the
e; and alſo inaſmuch as thoſe who give evidence before a
iff upon ſuch an inquiry may, in the common uſe of words,
properly called witneſſes, as thoſe who give evidence be-
the court in which an iſſue is joined, it ſeemeth to be the
plauſible opinion, that ſuch a perjury is within the ſtatute:
ſince it is diſputable, whether it be ſo or no, and it is cer-
that it is perjury at common law, and that in all caſes
ſoever where a man takes a falſe oath, which is not per-
within the ſtatute, but is looked on as perjury at common
, he is ſtill puniſhable for it by indictment or information
e common law, it is certainly moſt adviſeable to proſecute
an offender at the common law, and not upon the ſta-

Obſ. on the ſtat. 71.

See the authorities above cited.

C. Jac. 1.

King v. Thorogood, Trin. 9 Geo. 1. The defendant made an affidavit in the Com-
Pleas, and confeſſed it was falſe; the court recorded his confeſſion, and ſentenced
to the pillory. It was objected that this court has no juriſdiction, and that he ought
brought before the court by indictment, but theſe objections were over-ruled, be-
any court may puniſh ſuch an offence committed in *facie curiæ*, under this act of 5
c. 9. 8 Mod. 179.

Sect. 22. As to the third particular, *viz.* How far the
e oath muſt appear to have been prejudicial to ſome perſon,
ith been collected from the above mentioned clauſe which gi-
h an action to the party grieved by the offences mentioned in
ſtatute, That no falſe oath is within the meaning thereof,
ich does not give ſome perſon a juſt cauſe of complaint;
upon this ground it hath been ſaid, That he who ſwears a
ng which is true, but not known by him to be ſo, is not with-
the ſtatute, becauſe howſoever heinous his offence may be in
own nature, yet, when it proves in the event to be in mainte-
nce of the truth, it cannot be ſaid to give him a juſt cauſe of
mplaint, who would take advantage againſt another from his
ant of legal evidence to make out the juſtice of his cauſe.

3 Inſt. 166. Vid. ſup. ſ. 6. Hetley 97. *Contra.*

Sect. 23. Alſo from the ſame ground it ſeemeth clearly
follow, That no falſe oath can be within the ſtatute, un-
leſs

Vide ſup. f. 8. & 3 Inſt. 167.

leſs the party againſt whom it was ſworn ſuffered ſome kind diſadvantage by it, for otherwiſe it cannot be ſaid that any was grieved, hindered, or moleſted by it; and therefore certain, That in every proſecution upon the ſtatute, it is nec ſary to ſet forth the record of the cauſe wherein the perjury c plained of is ſuppoſed to have been committed; and alſ

Co. Ent. 164. 6 Mod. 168. 1 Roll. 76. 1 Keb. 452. 935 941. Raym. 202. 2 Leon. 12. 2 Roll 427. C. Car. 351, 352, 353. 1 Keb. 452. C. Eliz. 428.

prove at the trial of the cauſe, that there is actually ſuch a cord, by producing the record itſelf, or a true copy ther which muſt agree with that which is ſet forth in the pleadi without any material variance; for otherwiſe it cannot leg appear, That there ever was ſuch a ſuit depending, whe the party might be be prejudiced in the manner ſuppoſed. it ſeems to be agreed, That it is neceſſary not only to ſet f the point wherein the falſe oath was aſſigned, but alſo to ſhe what manner it conduced to the proof or diſproof of the matt debate between the parties; and it hath been adjudged, T an indictment ſetting forth a ſuit concerning the manor of *D* and aſſigning a falſe oath concerning the manor *(Manerium dictum innuendo)* is not good, becauſe it no otherwiſe appe That the falſe oath did concern the manor of *Dale*, but by *Innuendo*, which is not a ſufficient averment. Alſo upon

1 Keb. 935, 941.

ſame ground it ſeems to be ſafeſt in a proſecution upon ſtatute for a falſe oath in Chancery, to ſet forth the bill and ſwer, That the plaintiff may appear to have been aggrieve it; and for the ſame reaſon it ſeemeth alſo, That you ou in ſuch a proſecution of a witneſs in Chancery, to ſet f

Sid. 106.

the interrogatory in particular, and to ſhew how it was ma al. Alſo it hath been reſolved, That as in an action on

2 Leon. 12. 3 Leon. 68.

ſtatute brought by one perſon, it muſt appear, That the oath was prejudicial to the plaintiff; ſo in an action by than one, it muſt appear to have been prejudicial to every on the plaintiffs: And it hath been ſaid That it is not ſuffi to ſhew that the falſe oath cauſed the court to make an aw againſt the plaintiff, unleſs it alſo appear that ſuch an award prejudicial to him, and therefore where the plaintiff at a in ejectment challenged a juror, and proved his challenge falſe oath, by reaſon whereof the inqueſt was not taken,

2 Leon. 40,

conſequently the poſſeſſion of the defendant, who had a defea title, continued longer than it otherwiſe would have done hath been adjudged, That ſuch a defendant cannot have an tion on the ſtatute againſt ſuch witneſs, becauſe in truth gained an advantage by the perjury. Alſo it hath been hol That it is not ſufficient to ſhew that the perjury, for w an action is brought upon the ſtatute, was actually pr dicial to the plaintiff, unleſs it be alſo ſhewn to have made in ſome cauſe which may properly be ſaid to have depen

nding in ſuit between him and the perſon for whom the eſs was examined; and therefore it hath been holden, That re A. brought a bill in Chancery againſt B. and the lord er, by any order made C to be as a party to the bill a ſt B. and afterwards a commiſſion went forth to examine eſſes between B. and C. upon which D. being produced witneſs on the part of C. ſwore directly for him againſt B. reupon a decree was made againſt B. yet B. cannot have an n on the ſtatute, becauſe C. was not a party to the ſuit, came in *a latere*, by an order; and it is ſaid, That the ds of the ſtatute are, "where one is grieved by a depoſition a ſuit between party and party;" but perhaps the authority is opinion may juſtly be queſtioned, not only becauſe the ds of the ſtatute whereon it is grounded are miſtaken, but becauſe the offence ſeems in truth to be both within the ning and letter of the law, ſince thereby a perſon is grieved eſpect of a cauſe depending in ſuit in a court mentioned in ſtatute: However there ſeems to be no doubt, but that a ury which only tends to increaſe or leſſen the damages to be n to a plaintiff, is as much within the ſtatute, as any perjury ch goes directly to the point of the iſſue: Alſo it ſeemeth to ettled, That perjury in a cauſe wherein an erroneous judg- is given, is a good foundation of a proſecution upon the ſta- , while ſuch judgment ſtands unreverſed. Yelv. 2 Leon. 198. 1 Keb. 9. Raymond 74. 1 Sid. 148. 2 Keb. 718, 854. 1 Keb. 531.

Sect. 24. It is enacted by 8 Geo. 1 c. 6. 'That if any perſon making ſuch affirmation or declaration as is appointed by this act, ſhall be lawfully convicted of wilful, falſe and corrupt affirming or declaring any matter or thing, which if ſworn in the common or uſual form, would have amounted to wilful and corrupt perjury; every perſon ſo offending ſhall incur and ſuffer ſuch and the ſame pains, penalties and forfeitures as are inflicted or enacted by the laws againſt perſons convicted of wilful and corrupt perjury." Quakers.

Sect. 25. It is alſo enacted by 31 Geo. 2. c. 10. ſ. 24 That whoſoever ſhall willingly and knowingly take a falſe oath, or procure any perſon to take a falſe oath, to obtain the probate of any will or wills, or to obtain letters of adminiſtration in order to receive the payment of any wages, pay, or other allowances of money, or prize money, due, or that were ſuppoſed to be due, to any officer, ſeaman, or other perſon intitled, or ſuppoſed to be intitled, to any wages, pay, or other allowances of money or prize money, for ſervice due on board of any ſhip or veſſel of his majeſty, &c. or the executor, adminiſtrator, wife, relation or creditor of any ſuch officer or ſeaman, or other perſon who Probate of wills. O. B. 1784. p. 909.

"has

" has really ſerved, or was ſuppoſed to have ſerved on board
" any ſhip or veſſel of his majeſty, &c, ſhall be deemed guil
" of felony, and ſuffer death without benefit of clergy." (6)

(6) By 28 Geo. 2. c. 13. ſ. 14. For the relief of inſolvent debtors, if any ſheriff or ther officer perjure himſelf, in taking the oaths directed by the act, he ſhall forfeit —And if the offence be committed by a priſoner, or other perſon enabled and intending take the benefit of the act, it is felony without clergy.—Vide, alſo, 23 Geo. 3. c. reſpecting perjury of freeholders at elections for Cricklade.

Form of the indictment.

† *Sect.* 26. It is recited by 23 Geo. 2. c. 11. " Whe by reaſon of difficulties attending proſecutions for perjury a ſubornation of perjury, thoſe heinous crimes have freque gone unpuniſhed." For remedy whereof it is enacted " T
" in every information or indictment for wilful and corrupt p
" jury, it ſhall be ſufficient to ſet forth the ſubſtance of the
" fence charged upon the defendant, and by what court, or
" fore whom the oath was taken, (averring ſuch court, or p
" ſon or perſons to have a competent authority to adminiſter
" ſame) together with the proper avetment or averments to
" ſify the matter, or matters wherein the perjury or perjuries
" or are aſſigned, without ſetting forth the bill, anſwer,
" information, indictment, declaration, or any part of any
" cord or proceeding, either in law or equity other than as afo
" ſaid; and without ſetting forth the commiſſion or author
" of the court, or perſon or perſons before whom the perjury
" committed."

(7) In perjury in an anſwer in Chancery it is not neceſſary to prove the identity the perſon who ſwore the oath; it is ſufficient if the hand-writing be proved and that jurat was ſubſcribed by the maſter as being ſworn before him. 2 Burrow 1189. vide O. B. 1784. p. 912.

† *Sect.* 27. It is alſo further enacted by par. 2. " T
" in every information or indictment for ſubornation of per
" or for corrupt bargaining or contracting with others to co
" mit wilful and corrupt perjury, it ſhall be ſufficient to ſet fo
" the ſubſtance of the offence charged upon the defendant w
" out ſetting forth the bill, anſwer, information, indictm
" declaration, or any part of any record or proceeding ei
" in law or equity, and without ſetting forth the commiſſion
" authority of the court, or perſon or perſons before whom
" perjury was committed, or was agreed or promiſed to
" committed." (8)

(8) In general the court will oblige the defendant to plead or to demur to even a fective indictment for this offence. 2 Hawk. c. 25. ſ. 146. They are alſo very cau in granting a *certoriari* to remove it. 2 Haw. c. 27. ſ. 28. And Lord Thurlow re permiſſion to amend an anſwer, where an indictment for perjury had only been thr ned, even where the party, having no intereſt, could not be ſuppoſed to make the oath intentionally.—Brown's Caſes in Chancery, 419. For it is the province of grand jury to judge of the intention. Vaux v. Lord Waltham. And what the g jury may find, the court will never expunge. B. R. H. 203.

† *Sect.* 28. And the better to prevent great offenders from escaping punishment by reason of the expence attending such prosecutions, It is further enacted by p. 3. "That it shall and "may be lawful to and for any of his majesty's justices of assize, "or nisi prius, or general gaol delivery, or of any of the great "sessions of Wales, or of the counties palatine; and they are "hereby authorised (sitting the court or within twenty four hours "after) to direct any person examined as a witness upon any trial "before him or them, to be prosecuted for the said offence of "perjury, in case there shall appear to him or them a reasonable "cause for such prosecution, and that it shall appear to him or "them proper so to do; and to assign the party injured, or o-"ther person undertaking such prosecution, counsel, who shall, "and are hereby required to do their duty without any fee, gra-"tuity, or reward for the same." Such prosecution is also exempted from tax or duty and fees of court, and the clerk of the assize is ordered to give the prosecutor a certificate of the same, being directed, with the counsels names, &c.

The court may order perjured witnesses to be prosecuted.

† *Sect.* 29. And it is further enacted by 12 Geo. 1. c. 29. s. 4. "That if any person who hath been, or shall be convicted of wilful and corrupt perjury, or subornation of perjury, (9) shall act or practise as an attorney or solicitor, or "agent in any suit or action, in any court of law, or equity, "in England, the judge or judges of the court where such suit "or action is or shall be brought, shall, upon complaint or in-"formation thereof, examine the matter in a summary way (10) "in open court, and if it shall appear to the satisfaction of such "judge or judges, that the party hath offended contrary to this "act, such judge or judges, shall cause such offender to be "transported for seven years."

Attornies,

(9) Or of forgery or common barratry.

(10) Vide 2. Bar. K. B. 34.

CHAPTER THE SEVENTIETH.

OF FORGERY.

OF Forgery there are two kinds: First, By common law. Secondly, By the statute.

Britt. 16. Fleta 2. c. 22.

Sect. 1. Forgery by the common law seemeth to be an offence in falsly and fraudulently making or altering any matter of record; or any other authentick matter of a publick nature; as a parish register or any deed or will; punishable by fine and imprisonment, and such other corporal punishment as the court in discretion shall think proper.

For the better understanding whereof, I shall endeavour to shew: First, In what cases the making or altering of a writing, shall be said to be so far false and fraudulent, as to amount to forgery. Secondly, That a man may be guilty of forgery in respect of all the above mentioned writings, and no other.

Sect. 2. As to the first particular, it is said to be possible for a man knowingly to make a deed in his own name, and also to sign and seal it himself, which yet in judgment of law, may be no better than a downright forgery; as if a man make a feoffment of certain lands to J. S. and afterwards make a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S. in which case he is said to be guilty of forgery, because he knowingly falsifies the date, in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make. Also it is said, That his crime would have been no less, if by his conveyance he had passed only an equitable interest for good consideration, and had afterwards by such a subsequent antedated conveyance endeavoured to avoid it. Also in many other cases a writing may be said to be forged where neither the hand nor seal of any one are forged; as where one being directed to draw up a will for a sick person, doth insert some legacies therein of his own head; where one finding another's name at the bottom of a letter at a considerable distance from the other writing, causes the letter to be cut off, and a general release to be written above the name and then takes off the seal, and fixes it under the release; where one inserts into an indictment the names of those against whom in truth it was not found; or where one makes any fraudulent alteration of the form of a true deed in a material part of it; as by making a lease of the manor of Dale appear to be a lease of the manor of Sale, by changing the letter D into an S. or by making a bond for five hundred pounds, expressed in figures, seem to have been made for five thousand by adding a new cypher. But Sir Edward Coke seems to say That a deed so altered may more properly be called a false than a forged writing, because it is not forged in the name of another, nor his seal nor hand counterfeited. But I see no good reason why such an alteration of a deed should not as properly be called forgery, as the entire making of a new deed in another name: for in both cases not only the fraud and villainy are the very same, but also a man's hand and seal are falsly made use of to testify his assent to an instrument, which after such an alteration is no more his deed than a stranger's. Also the notion of forgery doth not seem so much to consist in the counterfeiting a ma-

3 Inst. 169. Pulton 46. 27 H. 6. 3. Moor 655, 759. Noy 101. 3 Inst. 170. Con. Dyer 288.

3 Inst. 171.

3 Modern 66. 8 Modern 192. Fitzgibbon 261. 12 Mod. 493, 496. Strange 69.

3 Inst. 169. Moor 619.

3 Inst. 169.

Vide Moor 619 3 Modern 66.

man's hand and ſeal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falſity, and either to impoſe that upon the world as the ſolemn act of another, which he is no way privy to, or at leaſt to make a man's own act appear to have been done at a time when it was not done, and by force of ſuch a falſity to give an operation, which in truth and juſtice it ought not to have, as appears by the foregoing caſes in this ſection, to moſt of which Sir Edward Coke himſelf ſeems to agree. Vide 2 R. Ab. 28, 29. 11 Coke 27. Foſter 116.

Sect. 3. But it ſeemeth to be clear, That he who writes a deed in another's name, and ſeals it in his preſence, and by his command, is not guilty of forgery, becauſe the law looks on it as the other's own ſealing. Pulton 46. 21 H. 6. 4.

Sect. 4. Alſo it hath been adjudged, That he ſhall not be puniſhed for forgery who raſeth out the word *libris* out of a bond made to himſelf, and putteth in *Marcis*, becauſe here is no appearance of a fraudulent deſign to cheat another, and the alteration is prejudicial to none but to him who makes it, whoſe ſecurity for his money is wholly avoided by it; yet it is ſaid, that it would be forgery, if by the circumſtances of the caſe it ſhould any way appear to have been done with an eye of gaining any advantage to the party himſelf, or of prejudicing a third perſon. Alſo it is holden, That ſuch an alteration, even without theſe circumſtances is a miſdemeanor, though it be no forgery. Noy 99. Moor 655. Salk. 375.

Sect. 5. It hath been reſolved, That a man ſhall not be adjudged guilty of forgery for writing a will for another without any directions from him, who becomes *non compos* before it is brought to him; for it is not the bare writing an inſtrument in another's name without his privity, but the giving it a falſe appearance of having been executed by him, which makes a man guilty of forgery. Moor 760.

Sect. 6. It is ſaid, That regularly a man cannot commit an act of forgery by a bare nonfeaſance, as by omitting a legacy out of a will, which he is directed to draw for another. Yet it hath been holden by ſome, even in this very caſe, That if the omiſſion of a bequeſt to one cauſe a material alteration in the limitation of a bequeſt to another, as where the omiſſion of a deviſe of an eſtate for life to one man cauſeth a deviſe of the ſame lands to another to paſs a preſent eſtate, which otherwiſe would have paſſed a remainder only, he who makes ſuch an omiſſion is guilty of forgery. In this caſe the firſt enquiry ſhould be with what intention the omiſſion was made. Moor 760. Noy 101.

Sect. 7. It ſeemeth to be no way material, whether a forged
inſtrument be made in ſuch a manner, That if it were in truth
ſuch as it is counterfeited for, it would be of validity, or not
1 Sid. 142. and upon this ground it hath been adjudged, That the forgery
of a protection in the name of A. B. as being a member of par-
liament, who in truth at the time was not a member, is
much a crime as if he were.

And now I am to ſhew in the ſecond place, That a ma
may be guilty of forgery at common law, in reſpect of any
the above-mentioned writings, and of no other.

1 R.Abr.65.76. *Sect.* 8. And firſt it is clear, That one may be guilty there-
Yelv. 146. of by the common law, by counterfeiting a matter of record
C. Eliz. 178. for ſince the law gives the higheſt credit to all records, it can-
3 Mod. 66, not but be of the utmoſt ill conſequence to the publick,
8 Mod. 192. have them either forged or falſified.
12 Mod. 493, 496.
Strange 69.

Sect. 9. Secondly, alſo there ſeemeth to be no doubt, bu
(a)1 R.Abr. 68. that one may be guilty of this crime by the common law, b
C Car. 326 forging any other authentick matter of a publick nature, as
1 Jones 325. (a) privy ſeal, or a (b) licence from the barons of the Exche
(b)1 R.Abr.65. quer to compound a debt, or a (c) certificate of holy orders,
2 Bulſ. 137. a (d) protection from a parliament man.
(c) 1 Lev. 138.
(d) 1 Sid. 142.

Sect. 10. Thirdly, It is alſo unqueſtionable, That a ma
(e) 1R.Abr.66. may be in like manner guilty of forgery at common law, b
Raymond 81. forging a (e) deed, and ſurely there cannot be any reaſon
Owen 47. doubt, but that one may be equally guilty by forging a (f) wil
1 Sid. 278. which cannot be thought to be of leſs conſequence than a dee
3 Leon. 170. But I do not find this point any where directly holden.
(f) Moor 760.
Noy 101.
Dyer 302. It is now made forgery by 2 Geo. 2. c. 25. ante, p. 210.

Sect. 11. As to the other writings of an inferior nature,
(g) 1 Roll. 431. ſeems to have been generally laid down as a (g) rule, Th
1 Sid. 16, 155, the counterfeiting of them is not properly forgery; (h) and ſom
451. have gone ſo far as to hold, That the forging another's han
1 R. Abr. 66. and thereby receiving rent due to him from his tenants, is
Winch. 40, 90. puniſhable at all; and therefore it cannot but be more ſafe
3 Leon. 231. proceed againſt offences of this nature, as cheats than as forg
1 Leon. 101. ries; but ſurely it cannot be proved by any good authori
C. Eliz. 296. That ſuch baſe crimes are wholly diſregarded by the comm
853. law, as not deſerving a publick proſecution; for the opinion
3 Bulſ. 265. the books above cited, That they are puniſhable by no la
(h) C.Eliz. 166. ſeems by no means to be maintainable, ſince many of them a
1 Yelv. 146. moſt certainly puniſhable by force of 33 Hen. 8. c. 1. which
1 Bulſt. 265. ſet forth at large in the following chapter. Neither can it be a co
(i) F. N. B. vincing argument, That they are not puniſhable at common law,
96, 99, 100. becau

because they are of a private nature; since deeds concerning private matters are also of a private nature, as much as other writings concerning such matters; yet no one will say, That the making a false deed concerning a private matter is not punishable at common law. But perhaps it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath been already shewn to be properly punishable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime, unless some one receive a prejudice from it. (1)

(1) Vide Barnard, K. B. 10. Ld. Raym. 1461. 2 Bac. Abr. 568. Where these opinions were very fully considered in the case of the King v. John Ward, of Hackney; and in which it was determined that to forge a release or acquittance for the delivery of goods; although not under seal, was forgery at common law. Vide also Lord Raym. 737. 5 Mod. 137. Raym. 81. and Strange 747.

Sect. 12. THUS far of Forgery by common law.—And now I am to consider forgery by the statute, which depends upon 5 Eliz. c. 14. by which it is enacted, "That if any person or "persons upon his or their own head and imagination, or by "false conspiracy and fraud with others, shall wittingly, sub- "tilly, and falsly forge or make, or subtilly cause, or wittingly "assent to be forged or made, any false deed, charter, or wri- "ting sealed, court roll, or the will of any person or persons "in writing, to the intent that the state or freehold or inheritance "of any person or persons of, in, or to any lands, tenements, "or hereditaments, freehold or copyhold, or the right, title, "or interest, of any person or persons, of, in, or to the same, "or any of them, shall, or may be molested, troubled, defea- "ted, recovered or charged; or shall pronounce, publish, or "shew forth in evidence, any such false and forged deed, char- "ter, writing, court roll, or will, as true, knowing the same "as false and forged, as is aforesaid, to the intent above remem- "bered, (except being an attorney, lawyer, or counsellor, he "shall for his client, plead, shew forth, or give in evidence such "false and forged deed, &c. to the forging whereof he was not "party nor privy) and shall be thereof convicted either upon "action or actions of forgery of false deeds, to be founded up- "on the said statute, at the suit of the party grieved or other- "wise, according to the order and due course of the laws "of this realm, &c. shall pay unto the party grieved his dou- "ble costs and damages to be found or assessed in that "court where such conviction shall be, and also shall be "set upon the pillory in some open market town, or other "open place, and there have both his ears cut off, and "also his nostrils slit and cut, and seared with a hot "iron, &c. and shall forfeit to the king the whole issues "and

Of Forgery by 5 Eliz. c. 14.

See Fulton 45, 46.

Par. 15.

"and profits of his lands and tenements, and ſuffer per-
"petual impriſonment, &c."

Sect. 13. And it is farther enacted by the ſaid ſtatute, par.
3. "That if any perſon or perſons, upon his or their own hea-
"or imagination, or by falſe conſpiration or fraud had with an-
"other, ſhall wittingly ſubtilly and falſly forge or make, or wit-
"tingly, ſubtilly, and falſly cauſe or aſſent to be made and forg-
"ed, any falſe charter, deed or writing, to the intent that any
"perſon or perſons ſhall, or may have, or claim any eſtate o-
"intereſt for a term of years, of, in, or to any manors, lands
"tenements, or hereditaments, not being copyhold, or any an-
"nuity in fee-ſimple, fee-tail, or for term of life, lives or years
"or ſhall as is aforeſaid, forge, make, or cauſe, or aſſent to b-
"made or forged, any obligation, or bill obligatory, or any ac-
"quittance, releaſe, or other diſcharge of any debt, accompt
"action, ſuit, demand, or other thing perſonal; or ſhall pro-
"nounce, publiſh or give in evidence, (except as before excep-
"ted) any ſuch falſe or forged charter, deed, writing obligato-
"on, bill obligatory, acquittance, releaſe, or diſcharge, as true
"knowing the ſame to be falſe and forged, and ſhall be there-
"convicted by any of the ways and means aforeſaid, he ſha-
"pay unto the party grieved his double coſts and damages, t-
"be found and aſſeſſed in ſuch court, where the ſaid convictio-
"ſhall be had, and ſhall be alſo ſet upon the pillory in ſom-
"open market town, or other open place, and there have one o-
"his ears cut off, and alſo ſhall ſuffer impriſonment for on-
"year, &c."

Lutw. 190.

Sect. 14. And it is farther enacted by the ſame ſtatute, pa-
7 and 8, "That if any perſon or perſons being convicted o-
"condemned of any of the offences aforeſaid, by any of th-
"ways or means above limited, ſhall after any ſuch his or the-
"conviction or condemnation, eſtſoons commit or perpetrate an-
"of the ſaid offences in form aforeſaid, that then every ſuc-
"ſecond offence ſhall be adjuged felony without benefit of clergy
"ſaving to all perſons other than the ſaid offenders, and ſuc-
"as claim to their uſes, all ſuch rights, &c. which they ſha-
"have to any the hereditaments of any ſuch perſon, ſo as
"aforeſaid convicted or attainted, at any time before, &c. ſa-
"ing alſo the dower of ſuch offender's wife, and the right of h-
"heirs."

A ſecond offence felony without clergy.

Sect. 15. And it is further enacted by the ſaid ſtatute, pa-
"10. "That all juſtices of oyer and terminer, and juſtices
"aſſize, ſhall have power to enquire of, hear and determine th-
"offences aforeſaid."

Sect. 16. But it is proved, par. 9, 12, & 16. "Th-
"this act or any thing therein contained, ſhall not extend

any ordinary or his commiſſary, &c. for putting their ſeal of office to any will to be exhibited unto them, not knowing the ſame to be falſe or forged, or for writing of the ſaid will or probate of the ſame, nor to any proctor, &c. of any eccleſiaſtical court, for the writing, ſetting forth, or pleading of any proxy made according to the eccleſiaſtical law, &c. for the appearance of any perſon being cited to appear in ſuch court; nor to any archdeacon, or official, for putting their authentick ſeal to the ſaid proxy or proxies, nor to any eccleſiaſtical judge for admitting the ſame; nor to any perſon who ſhall plead or ſhew forth any deed or writing exemplified under the great ſeal of England, or under the ſeal of any other authentick court of this realm; nor to any perſon who ſhall cauſe any ſeal of any court to be ſet to any ſuch deed, charter, or writing enrolled, not knowing the ſame to be falſe or forged."

In the conſtruction of this ſtatute the following points have been holden, 1 Hale 682,68.

Sect. 17. Firſt, That a falſe cuſtomary of a copyhold manor, made in parchment under the ſeals of ſeveral tenants of the manor, and containing in it divers falſe cuſtoms, apparently tending to the diſheriſhon of the lord, and falſly pretending by that title to be ſet forth by the conſent of all the tenants, and allowance of the lord, is within the firſt branch of forgery mentioned in the ſtatutes, as being a ſealed writing made with the intent to moleſt the inheritance of the lord. Dyer 322. 3 Leon. 108.

Sect. 18. Secondly, That the forgery of a leaſe for years, or of a grant of a rent-charge for years, in the name of one who is ſeiſed of a freehold or inheritance, is alſo within the ſaid firſt branch of the ſtatute, becauſe the ſaid branch is penned in general words extending to any moleſtation whatſoever of ſuch eſtate, without mentioning any eſtate or intereſt, in the claim whereof ſuch moleſtation ſhall conſiſt; and from this ground it follows, that theſe words in the ſecond branch of forgery mentioned in the ſtatute, "To the intent that any perſon ſhall claim any eſtate or intereſt for term of years, &c." are meant only of ſuch forgeries which relate to ſuch an eſtate or intereſt in *eſſe* before. 3 Inſt. 171. Noy 42.

Sect. 19. Thirdly, That the forgery of a will in writing of one poſſeſſed of ſuch an eſtate, mentioning a bequeſt thereof, is within the ſaid ſecond branch of the ſtatute, as being a falſe writing, made to the intent that ſome perſon may claim an eſtate for years; notwithſtanding the ſaid branch makes no expreſs mention of a will, as the firſt doth. Dyer 302.

Sect. 20. Fourthly, That the forgery of a leaſe of lands in England is not within either of the branches of the ſtatute. 3 Leon. 170.

Sect.

3 Leon. 170.

Sect. 21. Fifthly, That the forgery of a deed containing gift of mere perſonal chattels, is alſo no way within the ſtatute, the words whereof to this purpoſe are, "If any perſon "ſhall forge any obligation or bill obligatory, or any acquit "tance, releaſe, or other diſcharge of any debt, account, ac "tion, ſuit, demand, or other thing perſonal."

See C. 42 & 62.
1 Freeman 398.
15 H. 7. 15.
2 R. Abr. 466.
Con. 3 Inſt. 171

Sect. 22. Sixthly, That the forgery of a ſtatute-merch or of a recognizance in the nature of a ſtatute-ſtaple, by acknowledging them in the name of another are within the ſtatute, being obligations, becauſe they muſt have the ſeal of the party by the expreſs words of the ſtatutes, which appoint in what manner ſuch ſtatute or recognizance ſhall be taken. But that forgery of the ſtatute-ſtaple is no way within the ſtatute, becauſe it needeth not the ſeal of the party, but only the ſeal of the ple provided for it.

3 Inſt. 171.
1 Hale 685.

Sect. 23. Seventhly, That he who is truly informed another, that a deed is forged, is in danger of the ſtatute if afterwards publiſh the ſame to be true; notwithſtanding words of the ſtatute be, "If any one ſhall publiſh, &c. "falſe and forged deed, &c. knowing the ſame to be falſe "forged."

3 Inſt. 172.

Sect. 24. Eighthly, That the double damages to be awarded to the party grieved by a forged releaſe of an obligation &c. ſhall be governed by the penalty, and not by the true debt appearing in the condition.

3 Inſt. 172.

Sect. 25. Ninthly, That one who hath been convicted publiſhing a forge deed, may become guilty of felony by following another deed afterwards, as well as by publiſhing any deed, notwithſtanding the ſecond offence be not of the ſame nature with the firſt; for the words of the ſtatute "If any perſon being convicted or condemned of any of "offences aforeſaid, &c. ſhall after any ſuch conviction "condemnation, eſtſoons commit any of the ſaid offences."

11 Modern 3.
Holt 326.
3 Keb. 356. 367.
3 Inſt. 169.
See 1 Keb 849.
2 Keb. 129.
Other caſes of this kind.
2 Keb 245, 501, 532.
Farreſley 150.

Sect. 26. Tenthly, That notwithſtanding it be neceſſary every proſecution upon the ſtatute ſtrictly to purſue the words of it, (for which cauſe it hath been reſolved, That indictment ſetting forth the forgery of a writing indented, without adding that it was ſealed, is ſufficient;) yet there is no neceſſity that the tranſlation of ſuch words be made in proper Clerical Latin, ſo that it be intelligible; and upon this ground hath been adjudged, That an indictment, ſetting forth that defendant *ſuper caput ſuum proprium* did forge, &c. meaning thereby to expreſs that he did it of his own head, is ſufficient

Sect. 27. Eleventhly, That upon indictment of treſpaſs, forgery, and publication of a deed, a verdict finding the defendant guilty *de tranſgreſſione & forgeria prædictis prout ſuperius indictamento ſupponitur*, is ſufficient, becauſe theſe words *de tranſgreſſione prædict'* include the whole. Alſo perhaps ſuch a verdict may be ſufficient for another reaſon, becauſe the offence is equally within the ſtatute, and the puniſhment the very ſame, whether the party be guilty both of the forgery and publication, or of one of them only.

1 Ven. 23, 24. Salkeld 342. 375. 2 Lev. 111, 221. 3 Keble 353.

For other determinations upon this ſtatute, vide 2 Bac. Abr. 571. Keb. 707, 748. 3. Barnard, K. B. 168, 441, 461. and the caſe of the King v. Crooke. Strange 901. Beſides this geheral act, a multitude of others, ſince the revolution, when paper credit was firſt eſtabliſhed, have, in a variety of inſtances, inflicted capital puniſhment, on the crime of forgery. For which vide ante chapter fifty eight. 2 L. 204

CHAPTER THE SEVENTY-FIRST.

OF CHEATS.

OF Cheats puniſhable by public proſecution, there are two kinds: By the common law, and By ſtatute.

Sect. 1. And firſt it ſeemeth, that thoſe which are puniſhable at common law, may in general be deſcribed to be deceitful practices, in defrauding or endeavouring to defraud another of his known right by means of ſome artful device, contrary to the plain rules of common honeſty; as by (a) playing with falſe dice; or by (b) cauſing an illiterate perſon to execute a deed to his prejudice, by reading it over to him in words different from thoſe in which it was written; or by (c) perſuading a woman to execute writings to another, as her truſtee upon an intended marriage, which in truth contained no ſuch thing, but only a warrant of attorney to confeſs a judgment, &c. or by (d) ſuppreſſing a will, or by (e) levying a fine in another's name, or (f) ſuing out an execution upon a judgment for him, or acknowledging an action in his name, without his privity, and againſt his conſent; in which caſes, by ſome good (g) opinions the record may be vacated.

(a) 2 Roll. 107. C. Jac. 497, 498. 2 R. Abr. 78. 1 Keble 849. Par. Caſe 6. Modern 42. Farreſley 40. (b) 1 Sid. 312. (c) 1 Sid. 431. (d) Noy 103. (e) Noy 99. Moor 630. C. Eliz. 551. 1 Modern 48. 2 Jones 64. (f) Noy 99. (g) See the books above cited, but 2 R. Abr. 823. & 12 Co. 122. are contrary.

Sect. 2. It (h) ſeemeth to be the better opinion, That the deceitful receiving of money from one man to another's uſe, upon a falſe pretence of having a meſſage and order to that purpoſe, is not puniſhable by a criminal proſecution, becauſe it is accompanied with no manner of artful contrivance but

(h) 6 Mod. 105. Salkeld 379. 3 Modern 18. Blackerby 79. L. Ray. 1013. Seſſ. Caſ. 201.

Vide Wheatley's Case, Burr. 1125 Black. 273.

but wholly depends *on a bare naked lie*; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security.

See the authorities cited in sect. 1. And the acts recited infra. sect. 8 and 9.

Sect. 3. Some of the above-mentioned offences are punishable not only with fine and imprisonment, but also with farther infamous punishment, (as cheating with false dice, especially if the offender be a common gamester) others are punishable with fine and imprisonment only, by the discretion of the judges, which is regulated by the circumstances of each particular case; and some of them are made felonies by 21 Jac. c. 26. as appeareth from chapter forty-five.

(1) Changing corn by a miller and returning bad corn instead of it, is punishable by indictment; for being in the way of trade it is deemed an offence against the publick, 2 Sess Ca. 217. So also to run a foot race fraudulently, and by a previous understanding with the seeming competitor to win money. 6 Mod. 42. So also if an indented apprentice enters himself as a soldier, and receives the bounty, and is discharged on his master's demanding him, he may be indicted. The King v. Jones, Lent Ass. Coventry, 1777.

1 Hale 506. 2 Sess Cas. 27. Strange 866. Bar. K. B. 298, 331. Salkeld 379. 6 Modern 105, 111, 301, 311. 9 St. Tr. 67.

Sect. 4. Offences of this kind by statute depend upon 33 Hen. 8. c. 1. by which it is enacted, "That if any person or persons shall falsly and deceitfully obtain or get into his or their hands or possession, any money, goods, chattels, jewels or other things of any other person or persons, by colour and means of any privy false token, or counterfeit letter made in another man's name, to a special friend or acquaintance, for the obtaining of money, &c. from such person, and shall be thereof convicted by witness taken before the lord chancellor, or before the justices of assize, or before the justices of peace of any county, city, borough, town, or franchise, in their general sessions, or by action in any of the king's courts of record, every such offender shall suffer such punishment by imprisonment, setting upon the pillory, or otherwise by any corporal pains except pains of death, as shall be appointed by those before whom he shall be so convict."

Dalton. 32.

Sect. 5. And it is farther enacted by the said statute, "That as well the justices of assise for the time being, as also two justices of peace in the same county, whereof the one to be of the *quorum*, may call and convene by process, or otherwise, to the said assizes, or general sessions, any person being suspected of any of the offences aforesaid, and to commit or bail him till the next assises or general sessions, &c."

3 Inst. 123. C. Car. 564.

Sect. 6. Sir Edward Coke is of opinion, That the offender cannot be fined in a prosecution upon this statute, because it is expressly ordained, That some corporal punishment shall be inflicted, and no other is mentioned; however, there is a precedent in Croke's Reports, by which it appears, That one convicted on such a prosecution hath been adjudged not only to stand

nd on the pillory, but alſo to pay a fine of five hundred pounds, d to be bound with good ſureties to his good behaviour. (2)

(2) In indictments upon this ſtatute, the falſe token made uſe of muſt be ſet forth. r. 1127. And it has been held a falſe token to uſe for the purpoſes of deceit a counterfeit paſs. Dalt. 91. Or a pretended power to diſcharge ſoldiers. 1 Latch 202. Or obtain goods upon pretence of being of age and then pleading infancy. Or to produce pers purporting to be orders from abroad, and under the pretence of being a merchant obtain goods. Sayer 206. Or to exchange a ſpurious wine for a genuine commodi- under pretence of being a merchant and broker. 6 Mod 302. Or to ſell the fleſh of unbared bull as for ſteer beef. Sayer 147. Or to ſell any commodity by a falſe mea- re. Burr 1125. But ſelling beer ſhort of the juſt and due meaſure is not an indicta- offence. 1 Wilſon 301. Sayer 146. 1 Black. 274. Nor ſelling gum of one deno- ination for that of another. Sayer 205. Nor ſelling wrought gold as and for gold of the true ſtandard, provided the offender is not a goldſmith. Cowper 323.

† *Sect.* 7 it is alſo enacted by 30 Geo. c. 24, "That all perſons who knowingly and deſignedly by falſe pretences ſhall obtain from any perſon, money, goods, wares, or merchandizes with intent to cheat and defraud any perſon or perſons of the ſame, ſhall on conviction be put in the pillory, or publickly whipped, or fined and impriſoned, or tranſported, not exceeding the ſpace of ſeven years, as the court ſhall in diſcretion think fit."

O. B. 1785. No. 989.—Vide. annotations to Adding. P. S. p. 272. N. B. No *certiorari* lies upon this ſtatute. Cowper 24.

† *Sect.* 8. It is alſo enacted by 16 Car. 2. c. 7. "That if any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, ſkittles ſhovelboard; or by cock-fighting, horſe-racing, dog-matches, foot-races, or other paſtimes, or games, or by bearing a ſhare in the ſtakes, or by betting on the ſide of ſuch as ſhall play, act, ride, or run as aforeſaid, win any ſum or other valuable thing, he ſhall forfeit treble the value in the manner the act directs."

2 Abr. Eq. Caſ. 184. Siderfin 344. 1 Levinz 244. Ld. Raym. 69. 2 Levinz 44. 4 Com. Dig. 79.

† *Sect.* 9. It is alſo further enacted by 9 Ann c. 14. "That if any perſon ſhall by any fraud or ſhift, cozenage, circumvention, deceit or unlawful device or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money, or other valuable thing, on conviction by information or indictment, he ſhall forfeit to ſuch as ſhall ſue for the ſame, five times the value, be deemed infamous, and ſuffer corporal puniſhment as in caſes of perjury."

Vide Strange 1048. The King v. Lookup, where it was determined that the court cannot ſet a fine upon the offender on a conviction upon this act; that the only judgment they can give is, *that he is convicted*, &c.

CHAP.

CHAPTER THE SEVENTY-SECOND.

Of CONSPIRACY.

FOR the better understanding the nature of Conspiracy I shall consider who may be said to be guilty of it and what manner such offenders are to be punished.

2 Inst. 562. Reg. 134. a. 135 Godb. 444.

Sect. 1. As to the first point, there can be no better than the statute of 33, or rather 21 Edw. 1. the intent whereof was to make a final definition of conspirators, to which purpose it declareth, "That conspirators be they that do confederate "bind themselves by oath, covenant, or other alliance, that "every of them shall aid and bear the other falsly and mali- "ciously to indict, or cause to indict, or falsly to move or "maintain pleas, and also such as cause children within age to "peal men of felony, whereby they are imprisoned and "grieved; and such as retain men in the country with liveries "fees for to maintain their malicious enterprizes; and this "tendeth as well to the takers as to the givers. And stewards "and bailiffs of great lords, who by their seigniory, office, "power, undertake to bear or maintain quarrels, pleas, or "bates that concern other parties than such as touch the estate "their lords or themselves."

L. Ray. 1169. 8 Mod. 321. Burr. 930. 994. 1 Comm. 570.

Sect. 2. From this definition of conspirators it seems clear to follow, That not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment whereupon he is lawfully acquitted, are properly conspirators but that those also are guilty of this offence, who barely consult to indict a man falsly and maliciously, whether they do any act prosecution of such conspiracy or not. For the words of the statute seem expresly to include all such confederacies under the notion of conspiracy, whether there be any prosecution thereof or not. And if such a confederacy be within the letter of the statute, there seems to be no manner of reason to say, That they are not also within the meaning of it, since it is a high contempt of the law, barely to engage in such an association to abuse it to serve the purposes of oppression and injustice. Neither can there a severe construction which will bring a crime so evidently contrary to he first principles of common honesty, within the meaning of a law, the words whereof do plainly seem to extend it.

And therefore I cannot but queſtion the accuracy of that de- 3 Inſt. 143.
ſcription of conſpiracy which is given in the third Inſtitute, where- Ld. Ray. 378.
by the lawful acquittal of the party grieved is required to make 10 Mod. 219.
the offenders guilty of this crime. It is true indeed, That a bare F. N. B. 114.
conſpiracy to indict a man will not maintain a writ of conſpiracy 1 Dan. Abr.
at the ſuit of the party grieved, becauſe it doth not do him any 211, 213.
actual damage. Alſo it muſt be confeſſed, That it is often laid S. P. C. 173,
down as a general rule, and taken for granted, That no ſuch con- 174, 175.
ſpiracy is a good foundation for ſuch a writ, unleſs the plaintiff be B. Corone 89.
fully acquitted. And it is certain, That there is no formed B. Appeal 68.
writ of conſpiracy in the regiſter for a malicious indictment or 1 R. Abr. 110,
appeal; but what ſuppoſes ſuch indictment or appeal to have 111, 114.
been actually brought, and the party to have been legally diſ- 9 Co. 56, 57.
charged. From whence it follows, That no one can have the be- Regiſter 134.
nefit of any ſuch writ in the regiſter, who upon a falſe accuſation, 1 Jon. 93, 94.
is put to the trouble and vexation of being apprehended, examin- Salkeld 21.
ed, or committed, &c. without being ever indicted or appealed. 6 Modern 261.
However it is certain, That an acquittal by verdict is not always Bull N. P. 14.
neceſſary to maintain ſuch a writ, for it appears by the regiſter 10 Modern 219.
itſelf that where one brought ſuch a writ in the uſual form hav- B. Corone 6.
ing it in the words *quouſque acquietatus fuiſſet, &c.* againſt one who 33 H. 6, 1.
had been non-ſuited in a malicious appeal of felony brought See S. P. C. 174.
againſt him, his writ was abated, becauſe ſuch a nonſuit would Vide 2 Inſt.
not make good the words *quouſque acquietatus fuiſſet*, and yet he 407, 562.
afterwards brought a new writ, wherein he uſed the words 1 Ventris 47.
quietus receſſit, inſtead of *acquietatus fuiſſet*, and recovered. And
why may not a new writ as well be formed in any other caſe,
which is as much within the miſchief of the ſtatute as this? Or
what colour can there be to ſay, That the malicious putting of a
man to the unreaſonable charge, ſcandal, and trouble, of a cri-
minal proſecution, which is ſo palpably groundleſs, as not to
have probability enough to induce a grand jury to find an indict-
ment ſhould not be as good a foundation of complaint, and a
grievance as much within the meaning of the ſtatute, as the put-
ting one to the charge and vexation of a groundleſs action, either (a) Regiſt. 135.
in a temporal or ſpiritual court, for which it appears by the (a) F. N. B. 116.
regiſter, That a writ of conſpiracy doth lie without making uſe Finch 306.
either of the words *acquietatus fuiſſet*, or *quietus receſſit?* Nei- 2 Inſt. 562.
ther can it be ſaid, That the opinion I contend is wholly unſup- 1 Keb. 254.
ported by authority, as appears from the Poulterer's caſe in (b) (b) 9 Co. 56.
Coke's ninth report.

However ſince it is certain, That an (c) action on the caſe in (c) 1 Jon. 93,
the nature of ſuch writ doth lie for a falſe and malicious proſe- 94.
cution, for any crime, whether capital, or not capital, though it 1 Leon. 107.
doth not proceed to an actual indictment, or appeal, and that the C. Eliz. 70, 134.
ſame damages may be recovered in ſuch action as in a writ of Palm. 315.
conſpiracy, it hath been thought needleſs to inquire, whether C. Jac. 130,
ſuch writ may be maintained for ſuch a proſecution or not. 357, 490.
Latch 79.
C. Car. 15.

But

2 Roll. 256. 237. 2 Bulſt. 270, 271. 1 Roll. 109. 1 R. Ab. 112, 213.

But howſoever the law may ſtand in relation to writs of conſpiracy, there ſeems to be no manner of reaſon, that the ſtatute form of ſuch writs ſhould any way reſtrain a proceeding by way of indictment or information againſt perſons which are apparently within both the letter and meaning of the ſtatute. (1)

Ray. 135. 180. Con. 1 Bulſt. 185. Yelv. 116. Hutt. 49. C. Eliz. 563. 9 Co. 563. 9 Co. 57. 5 Mod. 394, 495. 1 Salkeld, 13. Danv. 208. Strange 691. 1 R. 374. Bull N. P. 14. Holt. 150.

(1) In an action for a malicious proſecution, it is incumbent on the plaintiff to ſhew that the original ſuit, whereſoever inſtituted, is at an end. For otherwiſe he might recover in the action, and afterwards be convicted upon the original ſuit. Douglas 205. For this purpoſe he muſt produce and prove, a copy of the acquittal on record, the ſubſtance of the evidence, the charges of acquittal, and the circumſtances which ſhew the proſecution was malicious and without probable cauſe. Bull Niſi Prius, 13, 14.

(d) 1 Lev. 62, 126. 1 Sid. 174. 1 Keble 350. (e) 1 Lev. 62. 1 Mod. 185, 186. 1 Sid. 68. 1 Keble 254. (f) 27 Aſſ. 44. 9 Co. 56. 3 R. Abr. 77. See Moor 788. Salkeld 174. 1 Ventris 303, 304. 6 Mod. 185. 8 Mod. 320. 11 Mod. 55. Carth. 416. Foſter 221.

Alſo it ſeems certain, That a man may not only be condemned to the pillory, but alſo to be branded for a falſe and malicious accuſation, but ſince it doth not appear to have been ſolemnly reſolved, that ſuch an offender is indictable upon the ſtatute, it ſeems to be more ſafe and adviſeable to ground an indictment of this kind upon the common law, than upon the ſtatute, ſince there can be no doubt, but that all confederacies whatſoever wrongfully to prejudice a third perſon, are highly criminal at common law, as where divers perſons confederate (d) together by indirect means to impoveriſh a third perſon, or (e) or falſely and maliciouſly to charge a man with being the reputed father of (f) a baſtard child, or to maintain one another in any matter whether it be true or falſe. (2)

(2) Journeymen confederating and refuſing to work unleſs for certain wages may be indicted for a conſpiracy, notwithſtanding the ſtatutes which regulate their work and wages do not direct this mode of proſecution, for the offence conſiſts in the conſpiring and not in the refuſal, and all conſpiracies are illegal although the ſubject matter of them may be lawful —Vide the caſe of the Tub-women v. the London Brewers. 8 Mod. 320. So alſo a bare conſpiracy to do a lawful act to an unlawful end is a crime, though no act be done in conſequence thereof. 8 Mod. 321. And the fact of conſpiring need not be proved on the trial, but may be collected by the jury from collateral circumſtances. 1 Black. Rep. 392. Strange 144. And if the parties concur in doing the act, although they were not previouſly acquainted with each other, it is conſpiracy. Lord Mansfield in the caſe of the priſoners in the King's Bench. Hillary Term. 2 Geo. 3.

(g) Palm. 45. 3 Keble 141. Style 157. 1 R. Abr. 110. 9 Coke 26. Yelv, 46, 117. C. Eliz. 563. 2 Bulſ. 270, 271. Cro. Jac. 357. 1 Roll. 309.

Sect. 3. Neither doth it ſeem to be any juſtification of a conſpiracy to carry on a falſe and malicious proſecution, That the indictment or appeal, which was preferred, or intended to be preferred in purſuance of it, was (g) inſufficient, or that the court wherein the proſecution was carried on, or deſigned to be carried on, had no juriſdiction of the cauſe, or that the matter of the indictment did import no manner of ſcandal, ſo that the party grieved was in truth in no danger of loſing either his life or liberty

ty, or reputation. For notwithſtanding the injury intended e party againſt whom ſuch a confederacy is formed, may aps be inconſiderable; (*h*) yet the aſſociation to pervert the in order to procure it, ſeems to be a crime of a very high na- and juſtly to deſerve the reſentment of the law.

(*b*) Reg. 134. F. N. B. 116. 3 aſſize 13. 11 H. 7. 25, 26. 1 R. Abr. 112. 2 Mod. 52, 326. Con. 2 Keb.

W. Jones 94. 2 Cr. 130. Vide the caſe of the King v. Riſpal. 1 Black. Rep. 368. 1320.

ct. 4. Neither (*a*) is it any plea for one who is proſecuted ſuch an unlawful confederacy, That nothing more was in- led by him, but only to give his teſtimony in a legal courſe of ce againſt the party to whoſe prejudice ſuch confederacy is poſed to have been formed; for notwithſtanding it may be , That it would be a great diſcouragement to legal proceed- to make peſrons liable to a criminal proſecution, for barely nding to give their evidence, and it would be a pre-judging cauſe to try the truth of the teſtimony intended to be given before the cauſe itſelf is determined; yet the law will rather ure this miſchief, than ſuffer ſo flagrant a villainy to go un- iſhed. However if there be any probability, That the prin- l cauſe will ever be tried, it ſeems proper to apply to the rt to ſtay the trial of the confederacy till the merits of the ncipal cauſe be determined.

(*a*) 9 Co. 55, 56, 57. 12 Co. 23, 90, 91, 92. C. Eliz. 70, 71. 134. 1 Leon. 107. 1 R. Abr. 113, 114, 115. Winch. 28, 54. Latch 79, 80. Con. 1 R. Abr. 10. F. N. B. 115. 27 H. 8. 2.

ct. 5. Yet (*b*) it ſeems to be certain, That no one is lia- to any proſecution whatſoever, in reſpect of any verdict given him in a criminal matter, either upon a grand or petit jury. ſince the ſafety of the innocent, and puniſhment of the guilty, h ſo much depend upon the fair and upright proceeding of rors, it is of the utmoſt conſequence, that they ſhould be as le as poſſible under the influence of any paſſion whatſoever. d therefore leſt they ſhould be biaſſed with the fear of being rriſſed by a vexatious ſuit for acting according to their conſci- ces, (the danger of which might eaſily be inſinuated, where werful men are warmly engaged in a cauſe, and thoroughly poſſeſſed of the juſtice of the ſide which they eſpouſe) the law ll not leave any poſſibility for a proſecution of this kind.

(*b*) 27 Aſſ. 77. 27 Aſſ. 12. 9 H. 6. 44. Bridg. 130, 131. 21 E. 3. 17. 47. E. 3. 17. 12 Co. 23, 24. Reg. 134. F. N. B. 115. 27 H. 8. 2. S. P. C. 172, 173. L. Ray. 463. 12 Co. 23, 24. Vaugh. 135.

It is true indeed, the jurors were formerly ſometimes queſ- ned in the Star-Chamber, for their partiality in finding a ma- feſt offender not guilty; but this was always thought a very eat grievance; and ſurely as the law is now ſettled by Buſhel's ſe, there is no kind of proceeding againſt jurors in reſpect of eir verdicts in criminal matters allowed of at this day. As to e objection, That an attaint lies againſt a jury for a falſe ver- ct *in a civil cauſe*, and that there is as much reaſon to allow it in a criminal one, it may be anſwered. That in an attaint, man's property is only brought into queſtion a ſecond time, and

F. N. B. 105, 106.

and not his liberty or life; and also it may be generally pre-
ed, That a jury is likely to be equally influenced with the
of an attaint from either of the contending parties, where-
any such examinations of their proceedings were allowed in
minal causes they might be often in great danger of one side,
incurring the resentment of a powerful prosecutor, and pro-
ing him to call their conduct into question for their supposed
tiality; but they could have little to fear from an injured cri-
nal who would seldom be in circumstances to make his prose-
tion formidable.

12 Coke 24. See Vaugh. 138, 139. 12 Ed. 4. 18. 21 Ed. 4. 67. S. P. C. 173.

Sect. 6. And as the law has exempted jurors from the d-
ger of incurring any punishment in respect of their verdi-
criminal causes, it hath also freed the judges of all courts of
cord from all prosecutions whatsoever, except in the parliam-
for any thing done by them openly in such courts as jud-
For the authority of a government cannot be maintained, un-
the greatest credit be given to those who are so highly intru-
with the administration of public justice; and it would be
possible for them to keep up in the people that veneration
their persons, and submission to their judgments without wh-
it is impossible to execute the laws with vigour and succes-
they should be continually exposed to the prosecution of th-
whose partiality to their own causes would induce them to th-
themselves injured. Yet if a judge will so far forget the dig-
and honour of his post, as to turn solicitor in a cause which h-
to judge, and privately and extrajudicially tamper with witne-
or labour jurors, he hath no reason to complain, if he be de-
with according to the same capacity, to which he so basely
grades himself.

12 Co. 24.

Carth. 416. 1 R. Abr. 107, 112, 115. B. Cor. 89.

Sect. 7. It appears not only from the words of the statu-
but also from the plain reason of the thing, That no confeder-
cy whatsoever to maintain a suit can come within the danger
the statute, unless it be both false and malicious. For it wo-
be a most dangerous discouragement of all legal prosecutions,
those who engage in them upon a probable ground, should be
danger of being found guilty of so heinous a crime upon th-
not being able to bring their suits to their intended effect. A-
from hence it clearly follows, That if the defendants to an i-
dictment or appeal in murder be found guilty of homicide
defendendo, or by misadventure, or get off by pleading t-
king's pardon, their prosecutors are in no danger of being p-
nished as conspirators. And from the same ground it also follow-
That if the defendants in a writ of conspiracy can shew a prob-
ble cause of suspicion, they shall be discharged; as where bei-
accused of a conspiracy for indicting a person of larceny, they c-
she-

3. P. C. 173. 22 Ass. 77.

ſhew that a larceny was committed at ſuch a time and place, and that the party charged by them for ſuch larceny was found by them at the ſame time and place, with ſuſpicious circumſtances; or where perſons being charged with a conſpiracy for indicting another for feloniouſly carrying away a woman with great violence, and numbers are able to prove that they ſaw the perſons whom they ſo accuſed riding armed in a warlike manner, and following after thoſe who in truth actually did the felony, and that it was the common report of the country that they were all of the company. But ſome have ſaid, That there is a neceſſity to plead ſuch matter ſpecially, and that it cannot be given in evidence on the general iſſue.

1 Leon. 107. C. Eliz. 134. Kelw. 81, 83. 20 H. 7. 11. 20 H. 7. 11. Kelw. 81. C. Eliz. 134. 1 Leon. 107.

Sect. 8. It plainly appears from the words of the ſtatute, That one perſon alone cannot be guilty of conſpiracy within the purport of it; from whence it follows, That if all the defendants who are proſecuted for ſuch a conſpiracy be acquitted but one, the (a) acquittal of the reſt is the acquittal of that one alſo. Alſo upon the ſame ground it hath been holden, That no ſuch proſecution is maintainable againſt a (b) huſband and wife only, becauſe they are eſteemed but one perſon in law, and are preſumed to have but one will.

12 Mod. 208. (a) 8 H. 4. 6. 28 Aſſ. 12. S. P. C. 175. C. Eliz. 701. 5 Mod. 222. 1 R. Abr. 111. (b) 38 Ed. 3, 3. S. P. C. 174.

But it is certain, That an action on the (c) caſe in the nature of a conſpiracy may be brought againſt one only. Alſo (d) it hath been reſolved, That if ſuch an action be brought againſt ſeveral perſons, and all but one to be acquitted, yet judgment may be given againſt that one only.

(c) Carth. 416. 1 R. Ab. 111. 112. F. N. B. 116. C. Jac. 194. C Car. 239. 1 Saund. 228.

Mod. 220. (d) 1 R. Abr. 111. 112. C. Eliz. 701. 6 Mod. 170. Ray. 176, 180 2 Keb. 497. Str. 144, 193, 1227. 1 Will. 210. 5 Mod. 408. Latch 0, 262. 12 Mod. 209. Buller N. P. 14.

Sect. 9. As to the ſecond point, *viz.* In what manner offenders, of this nature are to be puniſhed, it is clear, That thoſe who are convicted of conſpiracy at the ſuit of the (e) party ſhall only have judgment of fine and impriſonment, and to render to the plaintiff his damages. Alſo it is certain, that he who is convicted at the ſuit of the (f) king, of a conſpiracy to accuſe another of a matter which may touch his life, ſhall have judgment that he ſhall loſe the freedom and franchiſe of the law, (whereby he is diſabled to be put upon any jury, or to be ſworn as a witneſs, or even to appear in perſon in any of the king's courts;) and alſo that his houſes, lands, and goods, ſhall be ſeized in the king's hands, and his houſes and lands eſtreped and waſted, his trees rooted up and raſed, and his body impriſoned. And this is commonly called a villainous judgment, and is given by the common law and not by any ſtatute, as is ſaid generally in ſome (g) books,

(e) 24 Ed. 3. 34. b. 3 Inſt. 143. 2 Inſt. 383, 562. S. P. C. 175. (f) 24 Ed. 3. 34. 12 Mod. 209. F. N. B. 116. 3 Inſt. 143. 2 Inſt. 562. S. P. C. 173. 27 Aſſize 59. Carth. 416. (g) See the books above cited.

27 Aſſ. 59. S. P. C. 175. 46 Aſſ. 11. Burr. 1027. Strange 196.

to be the proper judgment upon every conviction of conſpiracy at the ſuit of the king, without any reſtriction to ſuch endangered the life of the party. But I do not find this any where ſettled. (3)

(3) There has been no inſtance of the villainous judgment ſince the reign of Edward the Third. The uſual mode of puniſhment at preſent is by pillory, fine, impriſonment and ſurety for the good behaviour. Burr. 996, 1027. Str. 196. Crown Cir. 208. The quarter ſeſſions have juriſdiction over this offence. Finch 80. 8 Mod. 321. And on motion in arreſt of judgment the defendant muſt be perſonally preſent in court. Strange 1127. Burr. 931.

CHAPTER THE SEVENTY-THIRD.

OF LIBELS.

See 3 Inſt. 174. 9 Co. 53, 59. Moor 813, 627. March 131. 4 Co. 14.

IN treating of Libels I ſhall conſider; Firſt, What ſhall be ſaid to be a libel. Secondly, Who are liable to be puniſhed for it. Thirdly, In what manner they are to be puniſhed.

Popham 133, 139. Selden tit. libels. 1 Ventris 31. Hob. 253. Carth. 405. 1 Salk. 211. Fitzgib. 121, 253. 2 Wilſon 403. 2 Burr. 980.

5 Coke 125. 5 Mod. 165, 166, 167. Salk. 418. Str. 422, 791. 12 Mod. 221. Ld. Ray 416. 12 Mod. 193.

Sect. 1. As to the firſt point it ſeemeth, That a libel in ſtrict ſenſe is taken for a malicious defamation, expreſſed either in printing or writing, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and expoſe him to publick hatred, contempt or ridicule.

5 Coke 125. Skin. 123, 124. Salkeld 418. Ld. Ray. 431. 3 Keb. 378.

Sect. 2. But it is ſaid, That in a larger ſenſe the notion of a libel may be applied to any defamation whatſoever, expreſſed either by ſigns or pictures, as by fixing up a gallows againſt a man's door, or by painting him in a ſhameful and ignominious manner.

1 Lev. 139. 5 Coke 125. 12 Coke 35. Raymond 201. Stra. 422. 898. Savil 49. Salk. 49, 418. 1 Sid. 270, 271. 3 Inſt. 174.

Sect. 3. And ſince the chief cauſe for which the law ſo ſeverely puniſhes all offences of this nature, is the direct tendency of them to a breach of publick peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impoſſible to reſtrain by the ſevereſt laws, were there no redreſs from publick juſtice for injuries of this kind, which all others are moſt ſenſibly felt; and ſince the plain meaning of ſuch ſcandal as is expreſſed by ſigns or pictures, is as obvious to common ſenſe, and as eaſily underſtood by every common capacity, and altogether as provoking, as that which is expreſſed by writing or printing, why ſhould it not be equally criminal?

Sect. 4. And from the ſame ground it ſeemeth clearly to follow, That ſuch ſcandal as is expreſſed in a ſcoffing and ironical manner, makes a writing as properly a libel, as that which is expreſſed in direct terms; as where a writing in a taunting manner reckoning up ſeveral acts of publick charity done by one, ſays, "You will not play the Jew, nor the hypocrite," and ſo goes on in a ſtrain of ridicule to inſinuate, that what he did was owing to his vain-glory; or where a writing, pretending to recommend to one the characters of ſeveral great men for his imitation, inſtead of taking notice of what they are generally eſteemed famous for, pitched on ſuch qualities only which their enemies charge them with the want of; as by propoſing ſuch a one to be imitated for his courage, who is known to be a great ſtateſman but no ſoldier; and another to be imitated for his learning, who is known to be a great general, but no ſcholar, *&c.* which kind of writing is as well underſtood to mean only to upbraid the parties with the want of theſe qualities, as if it had directly and expreſſly done ſo.

Hobart 215. Popham 139. 2 Wilſon 403. 2 Burrow 980. 2 Modern 119. 4 Modern 86. 4 Read. Stat. Law 151. Barn. 505, 289. Seſſ. Caſes 30. Popham 252. Hobart 215. Keble 293. Moor 627. R. Abr. 37. Fitzg. 121. 2 Strange 898.

Sect. 5. And from the ſame foundation it hath alſo been reſolved, (a) That a defamatory writing expreſſing only one or two letters of a name, in ſuch a manner, that from what goes before and follows after, it muſt needs be underſtood to ſignify ſuch a particular perſon, in the plain, obvious, and natural conſtruction of the whole, and would be perfect nonſenſe if ſtrained to any other meaning, is as properly a libel, as if it had expreſſed the whole name at large; for it brings the utmoſt contempt upon the law, to ſuffer its juſtice to be eluded by ſuch trifling evaſions; and it is a ridiculous abſurdity to ſay, That a writing which is underſtood (b) by every the meaneſt capacity, cannot poſſibly be underſtood by a judge and jury.

(a) Hurt's Caſe. Trin. 12. Annæ. 3 Modern 68. 12 Modern 139. Ld. Raym. 879.

(b) On application for an information ſome friend to the party complaining, ſhould by affidavit ſtate the having read the libel, and that he underſtands and believes it to mean the party. Note in 3 Bac. Abr. 493.

Sect. 6. And from the ſame ground it farther doth appear, That it is far from being a juſtification of a libel, that the contents thereof are true, (1) or that the perſon upon whom it is made, had a bad reputation, ſince the greater appearance there is of truth in any malicious invective, ſo much the more provoking it is.

5 Coke 125. Hobart 253. Moor 627. Strange 498. 3 Bacon 495. 9 St. Tr. 275.

(1) In an action, the truth of a libel may be pleaded in juſtification. Hob. 253. And even on a motion for an information, the truth or falſehood of the libelous matter will conſiderably influence the court either to refuſe or to grant it. Stra. 498. An affidavit therefore, except in particular caſes, is always required from the party applying, ſtating poſitively and directly that the contents of the imputed libel are not true. Doug. 284, 388. For the court will leave the injury to be remedied in the ordinary courſe of juſtice by action or indictment. Stra. 498.—But the court will not grant this extraordinary remedy by information, nor ſhould a grand jury find an indictment, unleſs the offence be of ſuch a criminal enormity that it may reaſonably be conſtrued to have a tendency to diſturb the

peace and harmony of the community. In such a case the public are justly placed in the character of an offended prosecutor, to vindicate the common right of all, though violated only in the person of an individual; for the malicious publication of even truth itself cannot in true policy be suffered, to interrupt the tranquillity of any well ordered society.—This is a principle so rational and pure that it cannot be tainted by the vulgar odium which has accompanied the derivation of the doctrine from the tyranny of the Star-Chamber; the adoption of it by the worst of courts can never weaken its authority, and without it all the comforts of society might with impunity be hourly endangered or destroyed.——Vide Law of Libels.

5 Coke 125.
1 Sid. 219, 271.
3 Inst. 174.
Cro. Car. 175, 504.
2 Roll. 86.
3 Mod. 139.
Comb. 65.
Carth. 15.
Hard. 470.
Skin. 123.
Keb. 773.
St. Tr. 2977.

Sect. 7. Nor can there be any doubt but that a writing which defames private persons only, is as much a libel as that which defames persons intrusted with a publick capacity, inasmuch as it manifestly tends to create ill blood, and to cause disturbance of the publick peace. However it is certain, That it is a very high aggravation of a libel that it tends to scandalize the government, by reflecting on those who are intrusted with the administration of publick affairs, which doth not only endanger the publick peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also has a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition.

(a) Hardres 470
1 Lev. 240.
1 Sid. 414, 415.
1 Saund. 131.
2 Keb. 832.
(b) 4 Coke 14.
(c) Dyer 285.
2 Inst. 228.
Bull. N. P. 6.
Moor 627.

Sect. 8. But it hath been resolved, That no false or scandalous matter contained in (a) petition to a committee of parliament, or in (b) articles of the peace exhibited to justices of peace, or in any other (c) proceeding in a regular course of justice, will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to publick prosecutions, in respect of their applications to a court of justice. And the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and to oblige them to refer the decision of their grievances to those whom the law has appointed to determine them.

(d) 2 Keb. 832.
2 Inst. 228.
2 And. 28.
Moor 143, 705, 820.
Popham 152.
Con. 4 Co. 14.
4 Com. Dig. 152
Dyer 285.
Yelverton 117.
2 Bulst 269.
Godbolt 340.
Palm. 145, 180.
Vent. 23.
12 Coke 103.
2 Modern 119.
2 Anderson 28.

Also (d) it seemeth to have been holden by some, That no want of jurisdiction in the court, to which such a complaint shall be exhibited, will make it a libel, because the mistake of the proper court is not imputable to the party, but to his counsel. Yet if it shall manifestly appear from the whole circumstances of the case, That a prosecution is intirely false, malicious, and groundless, and commenced, not with a design to go through with it, but only to expose the defendant's character under the shelter of a legal proceeding; I cannot see any reason why such a mockery of publick justice should not rather aggravate the offence, than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king; as it makes the malice of their proceeding a good foundation of an action on the case at the suit of the party, whether the court had a jurisdiction of the cause or not. But it is said, that a presentment

resentment of a grand jury can be a libel, not only becauſe persons who are ſuppoſed to be returned without their own ſeeking, and are ſworn to act impartially, ſhall be preſumed to have proper evidence for what they do, but alſo becauſe it would be of the utmoſt ill conſequence any way to diſcourage them from making their inquiries with that freedom and readineſs which the publick good requires. For which conſiderations, it ſeems reaſonable to exempt them from the fear of any kind of proſecution in reſpect of their inquiries, as has been ſhewn more at large in the chapter of conſpiracy.

See. 1 Danv. Abr. 208, 209. 210, 211. and the foregoing Chapter of Conſpiracy.

Moor 627.

Sect. 9. However it ſeems clear, That no writing whatſoever is to be eſteemed a libel, unleſs it reflect upon ſome particular perſon; and it ſeems That a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law, as I have heard it agreed in the Court of King's Bench; (2) yet it ſeems, That the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame.

Kely 238. Salk. 224. Ld. Ray. 486. 4 Read S. L. 151. Forteſ. 98. Seſſ. Ca. 29. 12 Mod. 139. 218, 220.

Ray. 879. 2 Strange 934. Bar. K. B. 138, 166. See the Chapter concerning Surety for the good Behaviour. 1 Vent. 10, 16.

(2) It was ſo agreed in Read's caſe, 11 Mod. 142; but in the caſe of the King v. Curl. Mich. 1. Geo. 2. for publiſhing an obſcene book, the Court were unanimous, that it is a temporal offence, and that Read's caſe was not law. Stra. 788, 834. Vide alſo 4 Burr. 2527.

Sect. 10. As to the ſecond point, *viz.* Who are liable to be puniſhed for a libel, it is certain that not only he who compoſes, or procures another to compoſe it, but alſo that he who publiſhes, or procures another to publiſh it, are in danger of being puniſhed for it; and it is ſaid, not to be material whether he who diſperſes a libel knew any thing of the contents or effect of it or not, for nothing could be more eaſy than to publiſh the moſt virulent papers with the greateſt ſecurity, if the concealing the purport of them from an illiterate publiſher would make him (3) ſafe in diſperſing them. Alſo it hath been ſaid, That if he who hath either read a libel himſelf, or hath heard it read by another, do afterward maliciouſly read or repeat any part of it, in the preſence of others, or lend or ſhew it to another, he is guilty of an unlawful publication of it. Alſo it hath been holden, That the copying of a libel ſhall be a concluſive evidence of the publication of it, unleſs the party can prove that he delivered it to a magiſtrate to examine it, in which caſe the act ſubſe-

Almon's caſe. 5 Burr. 2666. 9 Co. 59. Moor 267, 627 813. Strange 77. Bull N. P. 6. Fitzgibbon 47. Con. 9 Co. 59. L. Ray. 414, 417, 729. 4 Com. Dig. 152. B. 2. 5 Co. 125. 12 Co. 35. Comb. 359. 5 Mod. 167, 163. Vide Salk. 417, 418, 419, 646, 281. Carthw 405 to 410.

(3) But if a printer is confined in priſon, to which his ſervants have no acceſs, and they publiſh a libel without his privity, the publication of it ſhall not be imputed to him. Woodfall's caſe. Eſſay on Libels. p. 18. Sed. Vide Salmon's caſe, B. R. Hilary 1777, and Rex v. Almon. 5 Burr. 2687.

quent

quent is ſaid to explain the intention precedent. But it ſeems to be the better opinion, That he who firſt writes a libel dictated by another, is thereby guilty of making it, and conſequently puniſhable for the bare writing; for it was no libel till it was reduced to writing,

(a) 1 Keb. 931. 2 Keb. 261, 58. L. Ray. 341. 417, 486. Skin. 123. 12 Mod. 218. 11 Mod. 99. 3 Bac. Ab. 498. 1 Lev. 139, 240.

Sect. 11. Alſo it hath been reſolved, (a) That the ſending of a letter full of provoking language to another, without publiſhing it, is highly puniſhable; and if the bare making of a libel be an offence, whether it be publiſhed or not, as it ſeemeth to be holden in ſome (b) books, ſurely the ſending of it to the party reflected upon, muſt be a much greater crime, inaſmuch as it ſo manifeſtly tends to a diſturbance of the peace.

12 Co. 34. Pop. 139, 136. Ray. 201. 1 Sid. 270, 444. 1 Mod. 58. Hob. 62, 21
3 Inſt. 174. 4 Inſt. 180, 181. (b) 5 Mod. 167. 9 Co. 59. 1 Keb. 832. 12 Co. 3
See Fitz. 47. 12 Vin. Ab. 229. Barn. 306. Seſſ. Ca. 33.

Keb. 832. 1 Saund. 133. 1 Lev. 240. 1 Sid. 414, 415.

Sect. 12. Alſo it ſeems to be agreed, That he who delivers a paper full of reflections on any perſon, in nature of a petition to a Commitee of Parliament, to any other perſon except the Members of Parliament, may be puniſhed as the publiſher of a libel, in reſpect of ſuch a diſperſing thereof among thoſe who have nothing to do with it.

(c) 9 Co. 59. Moor 813. (d) 9 Co. 59. Moor 813. (e) Moor 627. 1 Vent. 31. 2 Keb. 502. Salk. 418. Carth. 409.

Sect. 13. But it hath been reſolved, That he who barely reads a libel in the preſence (c) of another, without knowing it before to be a libel, or who hearing a libel read by another (d) laughs at it, or who (e) barely ſays, That ſuch a libel is made upon ſuch a perſon, whether he ſpeaks it with or without malice, or who is only proved to have had a libel in his cuſtody, ſhall not in reſpect of any ſuch act be adjudged the publiſher of it. But the having in one's cuſtody a written copy of a libel publickly known, is an evidence of the publication of it.

Moor 627. 9 Co. 59.

Sect. 14. Alſo it hath been holden, That he who repeats part of a libel in merriment without malice, and with no purpoſe of defamation, is no way puniſhable; but it ſeemeth That the reaſonableneſs of this opinion may juſtly be queſtioned; for jeſts of this kind are not to be endured, and the injury to the reputation of the party grieved is no way leſſened by the merriment of him who makes ſo light of it

12 Vin. Ab. 88. 1 Keb. 832. 1 Saund. 133. 1 Levinz. 240. 1 Sid. 414, 415. Skin. 124. Hard. 470.

Sect. 15. But it ſeemeth to be ſettled, that the bare printing of a petition to a committee of parliament, (which would be a libel againſt the party complained of, if it were made for any other purpoſe, than as a complaint in a courſe of juſtice

and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, inasmuch as it is justified by the order and course of proceedings in parliament, whereof the King's Courts will take judicial notice.

Sect. 16. As to the third point, *viz.* In what manner offenders of this kind are to be punished, there seemeth to be no doubt, but that they may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender.

Cro. Car. 175. 504. 3 Inst. 174. 2 Inst. 228. 12 Co. 134. Stra. 934. 8 Mod. 178. Forte. 37, 201.

CHAPTER THE SEVENTY-FOURTH.

Of the OFFENCE of KEEPING a BAWDY-HOUSE, or AN UNLICENSED PLACE of ENTERTAINMENT.

THE offence of keeping a bawdy house being of so gross a nature, and there being also so few questions relating to it worth considering, I shall pass it over with these following observations. First, That it comes under the cognizance of the temporal law, as a common nuisance, not only in respect of its endangering the publick peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. Secondly, That a feme-covert is punishable for this offence (1) as much as if she were sole, as more fully hath been shewn, Chapter the first, Section twelve. Thirdly, That a lodger who keeps only a single room for the use of bawdry, is indictable for keeping a bawdy-house; but that the mere solicitation of chastity is not indictable. Fourthly, That offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion, shall seem proper.

2 Rol. 39. 79. 83. 4 Blac. Com. 29. 64. 167. 3 Burn. 95. 2 Ecc. Law. Kitchen 11. 3 Inst. 205. Salk. 382. 2 Ld. Ray. 1197. Dalt. p. 262. Popham 208. 1 Sid. 168, 410. 2 Burr. 1232. Salk. 384. 10 Mod. 63. 336.

(1) Therefore she may have an action for saying that she keeps a bawdy-house. Sayer 33.

† Sect. 2. As to the offence of keeping an unlicensed house, it is enacted by 25 Geo. 2. c. 36. made perpetual by 28 Geo. 2. c. 19.

Publick places within 20 miles of the metropolis muſt be licenced.

2. c. 19. "That any houſe, room, garden, or other place
"kept for publick dancing, muſick, or other publick enter-
"tainment of the like kind within the cities of *London* and
"*Weſtminſter*, or within twenty miles thereof, without
"licence had for that purpoſe from the laſt preceding Mi-
"chaelmas quarter ſeſſions of the peace, for the county or
"place, in which ſuch houſe, room, garden or other place
"is ſituate, as the juſtices in their diſcretion ſhall think fit
"ſignified under the hands and ſeals of four or more of the
"juſtices there aſſembled, ſhall be deemed a diſorderly houſe or
"place."

The form of ſuch licence.

† *Sect.* 3. And it is further enacted, "That every ſuch li-
"cence ſhall be ſigned and ſealed by the ſaid juſtices in open
"court, and afterwards be publickly read by the clerk of the
"peace together with the names of the juſtices ſubſcribing the
"ſame; and no ſuch licence ſhall be granted at any adjourned
"ſeſſions; nor ſhall any fee or reward be taken for any ſuch
"licence. And it ſhall be lawful for any conſtable or other per-
"ſon authorized by warrant, by a juſtice of the county or place
"where ſuch houſe or place ſhall be ſituate, to enter ſuch houſe
"or place, and to ſeize every perſon who ſhall be found therein, in
"order that they may be dealt with according to law. And
"every perſon keeping ſuch houſe, room, garden, or other
"place, without licence as aforeſaid, ſhall forfeit one hundred
"pounds to ſuch perſon as will ſue for the ſame, and be other-
"wiſe puniſhable as the law directs in caſes of diſorderly
"houſes."

How places ſo licenſed are to be diſtinguiſhed

† *Sect.* 4. And it is further enacted, "That there ſhall be
"affixed and kept up in ſome notorious place over the door or
"entrance of every ſuch houſe or other place, ſo licenſed as
"aforeſaid, an inſcription in large capital letters, in the
"words following. LICENSED PURSUANT TO ACT OF
PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE
"THE SECOND; and that no ſuch houſe, room, garden, or
"other place, kept for any of the ſaid purpoſes, although li-
"cenſed as aforeſaid, ſhall be open for any of the ſaid pur-
"poſes before five in the afternoon, and that theſe reſtrictions
"ſhall be inſerted in and made condition of the licence, which
"ſhall be forfeited on the breach thereof, and revoked by the
"next general or quarter ſeſſion, and not be renewed; nor ſhall
"any new licence be granted to the ſame perſon or perſons, or
"any other perſon on his or their or any of their behalf, or to
"their uſe or benefit, directly or indirectly, for keeping any
"ſuch houſe, room, garden, or other place, for any of the
"purpoſes aforeſaid."

N. B. This act ſhall not extend to the theatres royal, nor to any publick entertainments authorized by letters patent from the crown or licence from the Lord Chamberlain Sect. 6.

† *Sect.* 5. And it is enacted by par. 5. "That, in order
"encourage proſecutions againſt perſons keeping bawdy
"houſes

houſes, gaming-houſes, or other diſorderly houſes, if any two inhabitants of any pariſh or place paying ſcot and lot therein, do give notice in writing to the conſtable, or where there is no conſtable, to any other peace officer of ſuch pariſh or place of the like nature, of any perſon keeping a bawdy-houſe, gaming-houſe, or other diſorderly houſe within the pariſh or place, he ſhall forthwith go, with ſuch inhabitants to a juſtice of the county or place, and upon ſuch inhabitants making oath before ſuch juſtice that they believe the contents of ſuch notice are true, and entering into a recognizance of 30l. each to give material evidence againſt the offender, he the ſaid conſtable ſhall enter into a recognizance of 30l. to proſecute ſuch ſuit with effect at the next ſeſſions or aſſizes for the county, as to ſuch juſtice ſhall ſeem meet, And ſuch conſtable or other officer ſhall be allowed his reaſonable expences, to be aſcertained by two juſtices, and paid by the overſeers. And in caſe the offender ſhall be convicted, the owners ſhall immediately pay ten pounds to each of the inhabitants, on pain of forfeiting in each caſe double the ſum. And if the conſtable ſhall neglect his duty he ſhall forfeit 20l.

The mode of proſecution.

† *Sect.* 6. And it is further enacted by par. 6. "That upon ſuch conſtable or other officer entering into ſuch recognizance to proſecute as aforeſaid, the ſaid juſtice ſhall, by warant, bring the perſon accuſed before him, and bind him over to appear at the ſeſſion or aſſizes as aforeſaid, and if he thinks fit, may likewiſe demand and take ſecurity for ſuch perſon's good behaviour in the mean time.

Juſtices may ſummon the party, &c.

† *Sect.* 7. And it is further enacted, par. 8. "That every perſon who ſhall appear, act, or behave, as having the care and management of any ſuch houſe, ſhall be deemed the keeper of the ſame, and liable to be puniſhed as the maſter or miſtreſs, although not in fact the real owner or keeper thereof. Inhabitants may be witneſſes. The indictment not removeable by *certiorari*."

Who ſhall be deemed keeper of publick places.

CHAPTER

CHAPTER THE SEVENTY-FIFTH.

Of COMMON NUSANCES.

OFFENCES under the degree of capital, more imm diately againſt the ſubject, not amounting to an actual d turbance of the peace, which may be committed by private pe ſons without any relation to an office, and which are of an in rior nature to the ſix kinds of offences laſt treated of, being w ther infamous nor groſly ſcandalous, ſeem to be reducible to t following heads; Firſt, Such as more immediately affect t publick. Secondly, ſuch as more immediately affect the intere of particular perſons.

Offences of this kind, more immediately affecting the public are four-fold; viz. Common nuiſances. Monopolies. For ſtalling, ingroſſing, and regrating. And Barratry.

And firſt of common nuiſances. For the better underſtandi whereof I ſhall firſt conſider them in general, and then deſce to thoſe relating to highways and publick houſes, which ſeem be the moſt remarkable general heads of this offence.

As to common nuiſances in general I ſhall conſider *Fir* What ſhall be ſaid to be a common nuiſance. *Secondly*, How may be removed. *Thirdly*, How it may be puniſhed.

2 R. Abr. 83. *Sect.* 1. As to the firſt point it ſeems, that a common nu ſance may be defined to be an offence againſt the publick, eith by doing a thing which tends to the annoyance of all the kin ſubjects, or by neglecting to do a thing which the common go requires.

1 R. Abr. 83. Co. Litt. p. 56. *Sect.* 2. But annoyances to the intereſt of particular perſo are not puniſhable by a public proſecution as common nuiſance but are left to be redreſſed by the private actions of the parti aggrieved by them.

1 Sid. 209. Sayer 169. *Sect.* 3. And from hence it clearly follows, That no in dictment for a nuiſance can be good, which lays it to the da mage of private perſons only; as where it accuſes a man

(*a*) fu

surcharging such a common; or of (b) inclosing such a piece ground, wherein the inhabitants of such a town have a right common, to the nuisance of all the inhabitants of such a ; or of disturbing a (c) water-course running to the mill . S. *ad grave damnum J. S. & tenentium suorum*, without saying *omnium ligeorum Domini Regis*; or of doing a nuisance to a no way appearing to be of a publick nature, *ad grave* (d) *um*, or (e) *detrimentum*, or (f) *commune nocumentum omnium rum Domini Regis prope inhabitantium*; yet it hath been reed, that an indictment for not repairing a bridge by reason reof it was ruinous, *ita quod ligei Domini Regis per eam transire possunt*, and concluding, *ad nocumentum eorundem*, is good hout using the words *ad nocumentum omnium ligeorum*, &c. for he king's liege peo, le shall be understood, all his liege peo-

(a) 2R. Ab. 83. 1 Burr. 259. 6 Modern 453. 2 Wilson 57.
(b) 27 Ass. 6. 2 R. Abr. 83. C. Eliz. 90.
(c) 2 R. Ab. 83. 1 Ventr. 26.
(d) 2 R. Ab. 83.
(e) 1 Mod. 107.
(f) 1 Roll. 406. 3 Keb. 28, 284. C. Eliz. 414. C. Jac. 382. 1 Saund. 135. C. Eliz. 148. 2 Keble 461. 2 Leon. 183, 184. 9 Coke 113. 1 Ventris 208.

Sect. 4. Also it is said, That the law hath so tender a re- d for the interest of the king and of religion, That an indict- t for doing a thing which plainly appears immediately to d to the prejudice of either of them, is good, though it does expressly complain of it as a common grievance; and on this ground it hath been resolved, That an indictment for verting the king's money to one's own use is good, without re. And upon the same foundation also it hath been holden, at an indictment for breaking and digging up the wall of the rch of such a town, *ad nocumentum burgi ligeorum Domini* gis is good.

27 Ass. 19, 20. 2 R. Abr. 83, 84.

Sect. 5. Also it hath been said, That an indictment of a mmon scold, by the words *communis rixatrix*, which seem to precisely necessary in every indictment of this kind, is good, ough it conclude *ad commune nocumentum diversorum* instead of nium, &c. perhaps for this reason, because a common scold nnot but be a common nusance. And upon the like ground it ems that it may probably be argued, That an indictment for ying logs in the stream of a navigable publick river, *ad nocumentum J. S.* may be maintained, because it cannot but be a mmon nusance. And if the law be so in this case, why should ot also an indictment setting forth a nusance to a way, and exresly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude *in nocumentum diversorum ligeorum*, c. without saying *omnium*; for why should such a conclusion e more necessary in an indictment for one kind of nusance than or any other? And perhaps the (g) authorities which seem to ontradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nusance was alledged, were

6 Mod. 11, 178, 213, 239, 311. Moor 847. Str. 849, 1247. Bar. K. B. 229. 2 Sess. Cas. 26. 2 Keble 410. 1 Keble 161. 12 Mod. 504, 615. 1 Roll. 201. Sayer 167, 301.

(g) C. Eliz. 148. 2 Keble 461. 2 R. Abr. 83. Latch. 183.

were a highway, or only a private way; and therefore that shall be intended from the conclusion of the indictment that was a private way.

6 Bac A 272.
3 Inst. 205.
Kitchen 11.
2 Burr. 1232.
1 Modern 76.
2 Keble 846.
3 Keble 464.
5 Modern 142.
1 Vent. 169.
10 Mod. 336.
12 Mod. 342.

Sect. 6. There is no doubt but that common bawdy-hou are indictable as common nusances; also it hath been said, t all common stages for rope-dancers, and also all common gami houses, are nusances in the eye of the law, as hath been m fully shewn in the foregoing chapter; not only because they great temptations to idleness, but also because they are apt draw together great numbers of disorderly persons, which c not but be very inconvenient to the neighbourhood.

1 Roll. 109.
5 Mod. 142.
See Rushworth's Coll. Part 2. Vol. 1 fol. 220, 247. Skin. 625 to 630.
N. B. For the offence of acting plays without licence Vide infra ch. 87.

Sect. 7. Also it hath been holden, That a common play-ho may be a nusance, if it draw together such numbers of coac or people, &c. as prove generally inconvenient to the places a jacent; and it seems to be a proper distinction between pla houses and the nusances mentioned in the foregoing secti That play-houses having been originally instituted with a lau ble design of recommending virtue to the imitation of the p ple, and exposing vice and folly, are not nusances in their o nature, but may only become such by accident, whereas t others cannot but be nusances.

(a) 2 R. Abr. 138, 139, 265.
2 Roll 4, 30.
C. Jac. 382, 491.
Moor 238.
1 Roll 136, 201.
Poph. 143.
Con. 5. Co. 104.
(b) F. N. B. 2. c.
(c) 16 E. 4. 7 b.
Godb. 259.
(d) Quære Moor 580, & 621.
C. Eliz. 548.

Sect. 8. It hath been resolved, That neither an old nor a n (a) dovecote, whether it were erected by the lord of a man or one of his tenants, is a common nusance; for if a dovec were a common nusance, it could never become lawful by a licence or prescription whatsoever, because every nusance i *malum in se*: but it is certain, that a dove-house may be justifi by a prescription, and that it is so far countenanced by the la as to be (b) demandable in a *præcipe* before any land whatsoe which is not built upon, and that the owner may justify the t ing another's (c) hawk, which he shall find at his dove-hou flying at his pigeons; (d) and from hence it seems clearly to f low, That though a tenant, who builds a dove-house witho the licence of the lord of the manor, may perhaps be liable to action on the case at the suit of such lord, whose prerogative said to be incroached upon by the erecting such a house witho his licence, yet he cannot be punished for it by a publick pro cution.

N. B. for the nusance of keeping pigeons, vide 1 Jac. 1, c. 27. and 2 Geo. 3. c. 29.

1 Jon. 221.
C. Car. 184.
1 Bulf. 203.
2 R. Abr. 137.
Kit. 11, 23.
St. 18 Ed. 2.

Sect. 9. But perhaps it may be argued, That if this re soning be good, it will follow from the same ground, That gate erected in a highway will be also no nusance; because if were, it could not be justified by any prescription, as it is agre that it may be; but to this it may be answered, That the erec ing of such a gate is therefore a nusance because it interrupts t people in that free and open passage which they before enjoye

were lawfully intitled to; but where ſuch a gate has con-
d time out of mind, it ſhall be intended, That it was ſet
firſt by conſent, on a compoſition with the owner of the land
e laying out the road, in which caſe the people had never
right to a freer paſſage than what they ſtill enjoy.

ſect. 10. It hath been holden, That it is no common au-
e to make candles in a town, becauſe the needfulneſs of
n ſhall diſpenſe with the noiſomeneſs of the ſmell; but the
ſonableneſs of this opinion ſeems juſtly to be queſtionable,
uſe whatever neceſſity there may be that candles be made, it
ot be pretended to be neceſſary to make them in a town;
ſurely the trade of a brewer is as neceſſary as that of a
ddler; and yet it ſeems to be agreed, That a brew-houſe
cted in ſuch an inconvenient place, wherein the buſineſs can-
be carried on without greatly incommoding the neighbour-
d, may be indicted as a common nuſance; and ſo in the like
may a glaſs-houſe or ſwine-yard.

2 R. Abr. 139. Cont. 3 Mod. 138. Cro. Car. 510. Morley and Pragnell, 1 Burr. 336. 2 Keb. 500. Vide 1 Danv. 173, 174. Salk. 458, 460. Hutt. 136. Palmer 536. Ventris 26. 2 Ld. Ray. 1163.

ſect. 11. It ſeems certain, That it is a common nuſance to
rt part of a publick navigable river, whereby the current of
weakened, and made unable to carry veſſels of the ſame
rthen, as it could before. Alſo it hath been holden to be a
mmon nuſance to divide a houſe in a town for poor people to
abit in, by reaſon whereof it will be more dangerous in the
e of infection of the plague. (1)

Noy 405. 3 Keble 640, 759. 11 Modern 3. Fitz. 179. 2 R. Abr. 139. 1 Lut. 169.

(1) Or to make great noiſes in the night with a ſpeaking trumpet to the diſturbance of neighbourhood, Str. 704. Or permitting a houſe near the highway to continue in a ruinous condition, Salk. 357. Or laying timber in a publick river, although the ſoil on which it is laid belong to the party, provided it obſtructs the neceſſary intercourſe, 3 Bac, Ab. 536, Str. 1247. Or to place a floating dock in the river, although beneficial in repairing ſhips. Surry aſſizes at Kingſton, 1785. Or to travel with a cart on a common pack horſeway, and by plowing it up to render the uſe of it inconvenient, 6 Mod. 145. Or to put a ſhip of 300 tons into Billingſgate Dock, for although it is a common dock, yet only for the reception of ſmall veſſels freighted with proviſions for the London market. 1 Hawk, c. 25. ſ. 35. Or to manufacture acid ſpirit of ſulphur, vitriol, or aqua fortis within the vicinity of dwelling houſes. 1 Burr. 333. Vide alſo 13 Ed. 1. c, 24. 12 Rich. 2. c. 13. 2 W. & M, ſ. 2. c. 8. 30 Geo. 2. c. 22. 31 Geo. 2. c. 17, reſpecting nuſances within the cities of London and Weſtminſter.

But the fears of mankind, however reaſonable, will not create a nuſance, therefore it is no nuſance to erect a building for the purpoſes of inoculation. 3 Atkyns 21. 726. 750. Nor to lay bricks in the river Thames, in the party's own fiſhery, 3 Burr. 1770. Nor to violate a public law, Black. Rep. 572. Nor to ſtop up a proſpect, 3 Salk. 247, 439. Cro. Eliz. 118. And whether coney burrows are a nuſance. See 1 Burr. 259. 6 Mod. 213. See alſo 11 Mod. 7, and 8.

† It is enacted by 9 & 10 Will. 3. c. 7. "That it ſhall not be lawful for any perſon to make or cauſe to be made, or to ſell or utter, or offer or expoſe to ſale any fire-works, or any caſes, moulds or implements for making the ſame, on pain of 5l. on conviction before one magiſtrate, on the oath of two witneſſes. Or for any perſon to permit or ſuffer fireworks to be

Of nuſances in making fire-works.

" be caſt, thrown, or fired from out of or in his, her or
" houſe, lodgings or habitations, or from, out of, or in any
" or place ther to belonging or adjoining, into any publick
" highway, road, or paſſage, on pain of 20s. on convict
" aforeſaid. Or for any perſon to caſt, throw, or fire, or
" aidi g or aſſiſting therein, on pain of 20s. and that every
" offence is and ſhall be adjudged a common nuſance."

Of nuſances by erecting iotteries, &c.

† It is alſo enacted by 10 & 11 Will. 3. c. 17. " That
" miſchievous games called lotteries, and all other lotte
" are common and public nuſances; and that all grants,
" tents and licences for ſuch lotteries or any other lotteries
" void and againſt law; and whoever ſhall exerciſe, keep o
" ſhew or expoſe to be played at, drawn at or thrown at
" ſhall draw, play or throw at any ſuch lottery or other lot
" either by dice, lots, cards, balls or any other number
" figures, or any way whatſoever, ſhall forfeit 500l. for e
" offence, one third to the king, one third to the poor, and
" other third, together with double coſts, to the party
" ſhall inform and ſue for the ſame, and the parties ſhall al
" proſecuted as common rogues. And whoever ſhall
" throw or draw at any ſuch lotteries ſhall forfeit 20l. in
" ner aforeſaid."

Of nuſances by bubbling the publick.

† Is is alſo enacted by 6 Geo. 1. c. 18. ſ. 19. " That
" undertakings, attempts, and projects by publick ſubſcripti
" for adventuring in certain ſchemes of commerce, tendin
" the common grievance, of his majeſty's ſubjects or a g
" number of them, and the receiving and paying of any mo
" upon ſuch ſubſcriptions, &c. and more particularly the
" ſuming to act as a body corporate, or to raiſe transferr
" funds, or pretending to act under any charter formerly gra
" from the crown for any particular or ſpecial purpoſe the
" expreſſed, by perſons making or endeavouring to make u
" ſuch charter, for any ſuch other purpoſe not thereby inten
" and all acting or pretending to act under any ſuch obſo
" charter, &c. &c. ſhall be deemed a publick nuſance and
" ſances, the offenders made liable to ſuch fines penalties
" puniſhments as are inflicted on a conviction for common
" publick nuſances, and moreover to the further pains and
" nalties of *premunire*."

2 R. Abr. 44.
C. Car. 184.
1 Jon. 221.
11 Modern 7, 8.
Moor 374.
2 R. Abr. 145.
Salkeld 459.

Sect. 12. As to the ſecond point, viz. How a nuſance
be removed; it ſeemeth to be certain, That any one may
down or otherwiſe deſtroy a common nuſance, as a new gate,
even a new houſe erected in a highway, &c. for if one w
eſtate is, or may be, prejudiced by a private nuſance actu
erected, as a houſe hanging over his ground, or ſtopping
lig

es, &c. may juſtify the entering into another's ground, and ing down and deſtroying ſuch a nuſance, whether it were ted before or ſince he came to the eſtate, ſurely it cannot but w *à fortiori*, that any one may lawfully deſtroy a common nce: and as the law is now holden, it ſeems, that in a plea, fying the removal of the nuſance, you need not ſhew that did as little damage as might be. (*a*)

Yelverton 142. Ld. Raym. 264. 5 Coke 101. 9 Coke 54. Burrows 2116. 1 Roll. 9, 35. B. Niſ. 14. 1 Jon. 221. Salkeld 458.

Quære, vide Cooper v Marſhal, 1 Burrow 259, and Rex v. Pappineau. Strange 680,

ct. 13. It hath been adjudged, that if a river be ſtopped, he nuſance of the country, and none appear bound by pre- ption to clear it, thoſe who have the piſcary, and the neigh- ring towns, who have a common paſſage and eaſement there- may be compelled to do it.

37 Aſſ. 10. 2 R. Abr. 137.

ct. 14. As to the third point, viz. In what manner com- nuſances may be puniſhed. It is ſaid, (*b*) that a common d is puniſhable by being put into the ducking-ſtool: and there is no doubt, but that whoever is convicted of another ance, may be fined and impriſoned. And it is ſaid, That convicted of a nuſance, done to the king's highway may be mmanded by the judgment to remove the nuſance at his own ts; and it ſeemeth to be reaſonable, That thoſe who are nvicted of any other common nuſance ſhould alſo have the judgment.

(*b*) 6 Mod. 11. 178, 213.

2 R. Abr. 84. 2 Seſſ. Caſ. 39.

Vide Strange 686. Rex. v. Pappineau, and the caſes there cited.

CHAPTER THE SEVENTY-SIXTH.

NUSANCES RELATING TO HIGHWAYS.

AND now I am particularly to conſider ſuch nuſances as relate to highways, and publick houſes. And for the etter underſtanding of thoſe which concern highways I ſhall nſider: Such as relate to highways in general. And Such as elate to bridges in particular.

For the better underſtanding of nuſances relating to highways general, I ſhall examine the following particulars:

1. What ſhall be ſaid to be a highway.
2. At whoſe charge and by whom it ought to be repaired.
3. In what manner it is to be inlarged.
4. How the ſurveyors thereof ſhall be appointed.

5. How

5. How ſuch ſurveyors ought to execute their office.
6. What ſhall be ſaid to be a nuſance to the highway.
7. How ſuch nuſances are to be removed and puniſhed.
8. In what manner thoſe who are charged with any offence relating to the highway, are to be proceeded againſt.
9. How perſons ſo proceeded againſt may defend themſelves.

As to the firſt point, viz. What ſhall be ſaid to be a highway, it is ſaid that there are three kinds of ways: *Firſt*, a foot way, which is called in Latin, *iter*. *Secondly*, a pack and prime-way, which is both a horſe and foot-way, and called in Latin *actus*. *Thirdly*, a cart-way, which contains the other two; and alſo a cart-way, and is called in Latin, *via* or *aditus*, and this is either common to all men, and then it is called, *via regia*, or belongs to ſome city or town, or private perſon, and then it is called *communis ſtrata*.

Co. Lit. 56. *Communis ſtrata* and *acta via regia* are ſynonimous terms. Str. 44. 10 Modern 383. Andrews 143.

Sect. 1. It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it lead directly to a market-town, or only from town to town, may properly be called a highway, and that any ſuch cart way may be called the king's highway, and that a nuſance in any of the ſaid ways is puniſhable by indictment in the court-leet; for indictments for (*a*) ſtopping horſeways, and (*b*) footways, have often been allowed, and where others have been quaſhed, no other reaſon has been given for it, but that the way was not called a common way or highway; and in (*c*) books of the beſt authority, a river common to all men is called a highway; and it is laid (*d*) down as a general rule, That nuſances to any way common to all men, are inquirable in the leet, and horſe-cauſeys are taken notice of by (*e*) parliament; and therefore there ſeems to be no reaſon why any way leading from village to village, which does not terminate there, but is alſo a thoroughfare to other towns, may not properly be called a common or highway, or why a nuſance there in ſhould not be indictable, whether it directly leads to a market-town or not; for ſince ſuch a way lies open to all the king's ſubjects, a nuſance therein (*f*) cannot but be a common nuſance, and if it be not puniſhable by indictment it would not be puniſhable at all, inaſmuch as it (*g*) ſeems to be certain That it is not puniſhable by action, becauſe if one man might bring his action in reſpect of the poſſibility of the damage which he might receive from it, all other men may do the like, which would introduce a multiplicity of actions; and therefore the diſtinction which is taken in ſome (*h*) books concerning this matter ſeems to be ervy reaſonable, That every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects

Palm. 389. 6 Mod 255. B. R. H. 315.

(*a*) C. Eliz. 63. (*b*) 1 Vent. 208. 2 Keble 178. 3 Keble 26. 6 Modern 255. (*c*) 27 Aſſ. 23. Fitzh. 279. 2 Com. Dig. 397. (*d*) Co. Lit. 56. 5 Ed. 4. 2. (*e*) 3 & 4 W. & M. 12. 4 Burr. 2091.

(*f*) Kitchen 35. Palmer 389. 2 Roll. 412. (*g*) Moore 180. Cro. E. 664. Co Lit. 56. 27 H. 8. 27.

(*h*) 1 Vent. 189. Kitchen 35. 1 Vent. 208. 3 Keble 28. Ld. Raym. 1174. Salkeld 359.

ubject, but that a way to a pariſh-church, or to the common ields of a town, or to a private houſe, or perhaps to a village hich terminates there, and is for the benefit of the particular habitants of ſuch pariſh, houſe, or village only, may be cal- d a private way, but not a highway, becauſe it belongeth not all the king's ſubjects, but only to ſome particular perſons, Co. Lit. 56. ach of which, as it ſeems, may have an action on the caſe for nuſance therein. (1)

(1) A ſtreet built upon a perſon's own ground, is a dedication of the highway ſo far nly as the publick has occaſion for it, viz. for a right of paſſage, and is not to be under- ood as a transfer of the abſolute poſſeſſion of the ſoil. Strange 1004.

Sect. 2. It hath been holden, that if there be a highway in 1 R. Abr. 390. n open field, and the people have uſed, time out of mind, when he ways are bad, to go by outlets on the land adjoining, ſuch utlets are parcel of the way; for the king's ſubject ought to ave a good paſſage, and the good paſſage is the way, and not nly the beaten track; from whence it follows, That if ſuch Cro. Car. 366. utlets be ſown with corn, and the beaten track be founderous, Douglas 746 to 779. e king's ſubjects may juſtify going upon the corn. (2)

(2) So if one grants me away, and afterwards digs trenches in it to my hindrance, I ay fill them up again. But if a way which a man has, becomes not paſſable, or be- omes very bad, by the owner of the land tearing it up with his carts, ſo that the ſame be lled with water; yet he who has the way cannot dig the ground to let out the water, r he has no intereſt in the ſoil. Godb. 52, 53. But in ſuch caſe he may bring his ac- on againſt the owner of the land for ſpoiling the way, or *perhaps* he may go out of the ay, upon the land of the wrong doer, as near to the bad way as he can. But where a rivate way is ſpoiled by thoſe who have a right to paſs thereon, and not through the de- ult of the owner of the land; it ſeems that they who have the uſe and benefit of the way ught to repair it, and not the owner of the ſoil, unleſs he is bound thereto by cuſtom or ecial agreement. 2 Burr. 382. So if I have private way without a gate, and a gate is ung up, an action lies upon the caſe, for I have not my way as I had before. Litt. R. 67.

Sect. 3. It ſeemeth to be agreed, That an ancient highway C. Ca 66, annot be changed without the king's licence firſt obtained upon 267. writ of *ad quod damnum*, and an inquiſition thereon found, Vaugh 341. That ſuch a change will not be prejudicial to the publick; and 1 Burr. 465. is ſaid, that if one change a highway without ſuch authority, Vide Note (3) infra. e may ſtop the new way whenever he pleaſes; and it ſeemeth, That the king's ſubjects have not ſuch an intereſt in ſuch new ay as will make good a general juſtification of their going in it m a common highway; but that in action of treſpaſs brought the owner of the land againſt thoſe who ſhall go over it, they ught to ſhew eſpecially, by way of excuſe, how the old way C. Car. 267. as obſtructed, and the new one ſet out; alſo it is ſaid, That Yelv. 141, 142. e inhabitants are not bound to keep watch in ſuch new way, or make amends for a robbery therein committed, or to repair it.

C. Car. 267. 22 Aſſize 93. 1 R. Abr. 390. Vide Taylor v. Whitbread, Douglas 745.

Sect. 4. However it is certain, That a highway may be changed by the act of God; and therefore it hath been holden, That if a water which has been an ancient highway by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. (3)

(3) An owner of land over which there is an open road may incloſe it by his own authority, but he is bound to leave ſufficient ſpace and room for the road, and he is obliged to repair it till he throws up the incloſure. But if *he* alter or change the road by a legal courſe of a writ of *ad quod damnum*, he is not obliged to repair the new road, unleſs the jury impoſe ſuch a condition upon him; for otherwiſe it ſtands juſt as it did before. Even though it was at firſt open and ſhould be directed by the jury to be incloſed.—And a private act of parliament for incloſing lands, which veſts a power in commiſſioners to ſet out new roads by their award is equally ſtrong as to theſe conſequences as a writ of *ad quod damnum*. 1 Burr. 465.

As to the ſecond point, viz. At whoſe charge, and by whom the highway ought to be repaired, I ſhall conſider, What proviſion is made by the common law concerning this matter; and What by ſtatute.

(a) 1 R. Abr. 390. (b) March 26. 1 Vent. 90, 183, 189. Sum. 144, 8 H. 7. 5. Ld. Raym. 725.

Sect. 5. As to the firſt of theſe particulars, it ſeems to be agreed, That of common right, the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are; but it is ſaid, That the tenants of the lands adjoining are bound to ſcowr their ditches, and there is no doubt but particular perſons may be burthened with the general charge of repairing the highway in two caſes: viz. In reſpect of an incloſure of the land wherein it lies. And In reſpect of a preſcription.

1 R. Abr. 390. C. Car. 366. 1 Siderfin 464. Sed Vide 1 Burr. 461 to 466, *contra*. Ld. Raym. 1170

Sect. 6. And firſt a particular perſon may be bound to repair a highway in reſpect of an incloſure; as where the owner of lands not incloſed, next adjoining to the highway, incloſes his lands on both ſides thereof, in which caſe he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then a bad way defective, becauſe, before the incloſure, the people uſed when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common track, which liberty is taken away by the incloſure.

1 Siderfin 464.

Sect. 7. Alſo it hath been holden, That if one incloſe land on one ſide, which hath been anciently incloſed of the other ſide, he ought to repair all the way, but that if there be not ſuch an ancient incloſure of the other ſide, he ought to repair but half that way: and it is ſaid, That where ever one is bound to repair a highway in reſpect of an incloſure, a

lays it open again as it was before, he shall be freed from the charge of repairing it. (4)

(4) So in a writ of *ad quod damnum*, and inquisition found thereupon, after the person hath once made the road, (and N. B. it is not necessary the whole new road should go through his own soil,) the parishioners ought to keep it in repair; because being discharged from the repairing of the old road, no new burthen is laid upon them; their labour is only transferred from one place to another. But if the new road lies in another parish, the person who sued out the writ, and his heirs ought to keep it in repair; because the inhabitants of the other parish gaining no benefit from the old road being taken away, it would be imposing a new charge upon them, for which they enjoyed no compensation. 3 Atk. 772.

Sect. 8. Secondly A particular person may be bound to repair a highway in respect of a prescription; (a) and it is said, That a corporation aggregate may be compelled to do it by force of a general prescription, That it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration, because such a corporation in judgment of law never dies, and therefore, if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, That such corporation have always done it out of charity; for what it hath always done, it shall be presumed to have been always bound to do; but it is said, That a person cannot be charged with such a duty by a general prescription from what his ancestors have done, because no one is bound to do what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like service, *&c.* yet it seems, That an indictment charging a tenant in fee-simple with having used of right to repair such a way *ratione tenuræ terræ suæ*, is certain enough, without adding, That his ancestors, or those whose estate he hath, have always so done, for that is implied in saying, That he has always used to do it *ratione tenuræ suæ*. Also an occupier, as such, though at will only, is indictable for suffering a house standing upon the highway to be ruinous, *&c.* and the words *ratione tenuræ*, *&c.* if added, are surplus.

(a) Where the original of a way is accounted for, the prescription is destroyed. Strange 909. 2 Saund. 160. 27 Assize 8. 21 Ed. 4. 38. Brook Prescription 49, 78. Far. 54, 55. 21 Ed. 4. 31. A person indicted for not repairing roads *ratione tenuræ* shall pay costs to the prosecutor. 1 Black. 602. See Vide Black. K. v. Chesthunt contra. Kellw. 52. a. Latch. 206. 3 Salk. 77, 381, 6 Modern 150. 190, 255. Salk. 357. a.

Sect. 9. However it seemeth certain, That whether a particular person be bound to repair a highway by inclosure, or prescription, *&c.* yet the parish cannot take advantage of it upon the plea of Not guilty to an indictment against them for not repairing it, but ought to set forth their discharge in a special plea. (5)

1 Mod. 112. 3 Keble 301. 1 Ventris 256. 10 Mod. 150, 382. 12 Modern 15, 198, 409. Ld. Ray. 725, 922, 1162. Strange 179.

(5) The repair of highways lies, of common right, upon the whole parish. But if a parish lies in two distinct counties, an indictment may be brought against that part of the parish in which the ruinous road lies. 4 Burr. 2511. But it must appear upon the face of the indictment by what right the charge is laid upon the particular division of any parish which is in one county only. 5 Burr. 2702. As that they have repaired time out of mind. Andr. 276. B. R. H. 259

Sect. 10. AND now I am to conſider in the ſecond place, at whoſe charge, and by whom the highway out to be repaired by force of THE STATUTE.

For the better underſtanding whereof, I ſhall examine: Firſt, Who are by ſtatute compellable to work in the repairs thereof in their own perſons, or by others. Secondly, Who may be aſſeſſed to a rate made for the defraying of the extraordinary charges of ſuch repairs. Thirdly, What other proviſions have been made to this purpoſe, Fourthly, In what manner the profits of lands ſettled in truſt for the repairs of the highways ſhall be imployed.

Statute duty. N. B. By 13. Geo. 3. c. 84, ſ. 60. the ſame powers are given to the ſurveyor of turnpike roads, with the conſent of the truſtees.

† As to the firſt point, It is enacted by 13 Geo. 3. c. 78. par. 34. "That the ſurveyor to be appointed, as hereafter mentioned, together with the inhabitants (6) and occupiers of lands, tenements, woods, tithes, and hereditaments, within each pariſh, townſhip, or place, ſhall at proper ſeaſons in every year, uſe their endeavours for the repair of the high-ways, and ſhall be chargeable thereunto, as followeth: Every perſon keeping a waggon, cart, wain, plough, or tumbrel, and three or more horſes or beaſts of draught uſed to draw the ſame, ſhall be deemed to keep a team, draught, or plough, and be liable to perform ſtatute-duty with the ſame, in the pariſh, townſhip, or place, where he reſides, and ſhall, ſix days (7) in every year, (if ſo many days ſhall be found neceſſary) to be computed from Michaelmas to Michaelmas, ſend on every day, and at every place, to be appointed by the ſurveyor for the amending the highway in ſuch pariſh, townſhip, or place, one wain, cart, or carriage, furniſhed after the cuſtom of the country, with oxen, horſes, or other cattle, and all other neceſſaries fit to carry things for that purpoſe, and alſo two able men with ſuch wain, cart, or carriage; which duty ſo performed, ſhall excuſe every ſuch perſon from his duty in ſuch pariſh, townſhip, or place, in reſpect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of fifty pounds, which he ſhall occupy therein. And every perſon keeping ſuch team, draught, or plough, and occupying in the ſame pariſh, townſhip, or place, lands, tenements, woods, tithes, or hereditaments of the yearly value of fifty pounds, over and beyond the ſaid yearly value of fifty pounds, in reſpect whereof ſuch team-duty ſhall be performed; and every ſuch perſon occupying to the yearly value of fifty pounds in any other pariſh, townſhip, or place, beſides that wherein he reſides, and every other perſon not keeping a team, draught, or plough but occupying to the yearly value of fifty pounds, in any pariſh, townſhip, or place, ſhall, in like manner reſpectively, and for the ſame number of days, find and ſend one wain, cart, or carriage, furniſhed with not leſs than three horſes, or four oxen and one horſe, or two oxen and two horſes, and two able

(6) The inhabitants of a pariſh into which a road is turned by turnpike truſtees, are not bound to do ſtatute work thereon. Black. 603.

(7) The appointment of the ſix days work muſt ſpecify the particulars days. Ld. Raym. 858.

" able men to each wain, cart, or carriage; and in like manner " for every fifty pounds *per annum* reſpectively, which every ſuch " perſon ſhall further occupy, in any ſuch pariſh, townſhip, or " place reſpectively; ſuch wains, carts, or carriages, to be em- " ployed by the ſurveyor in the repairing and amending the high- Contribution " ways within the pariſh, townſhip, or place, where ſuch lands, money. " tenements, woods, tithes or hereditaments, ſhall reſpectively " lie; and every perſon who ſhall not keep a team, draught, or " plough, but ſhall occupy under the yearly value of fifty pounds, " in the pariſh, townſhip, or place where he reſides, or in any " pariſh, townſhip, or place; and every perſon keeping a team, " draught, or plough, and occupying under the yearly value of " fifty pounds, in any other pariſh, townſhip, or place, than " that wherein he reſides, ſhall reſpectively contribute to the " repair of the highways, and pay to the ſurveyor of ſuch pariſh, " townſhip, or place reſpectively, in lieu of ſuch duty, the ſums " following; *viz.* For every twenty ſhillings of the annual va- " lue of ſuch lands, tenements, woods, tithes, or hereditaments " reſpectively the ſum of one penny for every day's ſtatute-duty " which ſhall be required and called for by the ſurveyor of ſuch " pariſh, townſhip, or place reſpectively, in every year not ex- " ceeding ſix days duty in the whole, as aforeſaid; and every " ſuch perſon reſpectively ſhall, in like manner, pay the ſum of " one penny for every twenty ſhillings of the annual value which " he ſhall occupy in any ſuch pariſh, townſhip, or place reſ- " pectively, above the annual value of fifty pounds, and leſs " than one hundred pounds, and ſo for every twenty ſhillings " that each progreſſive and intermediate annual value of twenty " ſhillings, which he ſhall ſo occupy, ſhall fall ſhort of the fur- " ther increaſe of fifty pounds, in every pariſh, townſhip, or " place, where ſuch lands, tenements, woods, tithes, and he- " reditaments, ſhall reſpectively lie, for every day's ſtatute-duty " ſo to be required as aforeſaid; which ſaid ſeveral ſums ſhall be How the con- " conſidered as compoſitions, and ſhall be paid to the ſurveyor tributions are " of the pariſh, townſhip, or place, in which they are charged, to be received. " for the uſe of the highways therein, at the time ſuch compoſi- " tions are to be paid under the authority of this act, or within " ten days after; or in default of ſuch payments, ſuch money " ſhall be levied by diſtreſs, and ſale of the goods and chattels " of the perſon or perſons refuſing to pay the ſame, in ſuch man- " ner as the forfeitures for the neglect in performing the ſtatute- " duty are hereby authoriſed to be levied and raiſed: Provided, " that no perſon keeping ſuch team, draught, or plough, and per- " forming the duty with the ſame, as aforeſaid, in the pariſh, " townſhip, or place, where he reſides, and not occupying with- " in the ſame, to the yearly value of thirty pounds, ſhall be " obliged to ſend more than one labourer, with ſuch team, " draught, or plough."

Sect.

The duty required from persons who do not keep a team, but keep one or two horses used to draw, or who keep a coach, post-chaise, &c.

† *Sect.* 11. And it is further enacted by the said statute, par. 35. "That every person who shall not keep a team, draught, "or plough, but shall keep one or more cart, or carts, and, "one or two horses or beasts of draught only, used to draw in "each of such carts upon the highways, shall be obliged to per- "form his statute-duty for the like number of days with such cart "or carts, and horse or horses, or beasts of draught, and one la- "bourer to attend each cart, or to pay for the lands, tenements, "woods, and hereditaments, which he shall occupy, according "to the rate aforesaid, at the option of the surveyor; and every "person who shall keep a coach, post-chaise, chair, or other "wheel-carriage, and not keep a team, draught, or plough, "nor occupy lands, tenements, woods, tithes, or hereditaments, "of the annual value of fifty pounds, in the parish, township, or "place where he shall reside, shall pay to the surveyor one shil- "ling in respect of every such day's statute-duty, for every horse "which he shall draw in any such carriage, or shall pay ac- "cording to the value which he shall occupy, according to the "rate aforesaid, at the option of the surveyor; and also every "man inhabiting in any parish, township, or place, and being "of the age of eighteen, and under the age of sixty years, not "chargeable in any of the respects aforesaid for lands, tenements, "woods, tithes, or hereditaments, of the yearly value of four "pounds, or upwards, and not being *bona fide* an apprentice or "menial servant, not having performed the said duty, or paid the "composition for the same, in any other parish, township, or "place, for that year, shall, by themselves, or one sufficient

Labour from occupiers of less than 4*l. per annum*,

"labourer for every of them, upon every of the said days on "which they shall be called forth by the said surveyor, toge- "ther with the said other labourers, work and labour in the "amendment of the said highways, as they shall be directed by "such surveyor; and if the said teams, draughts, or ploughs, "or any of them, shall not be thought needful by the surveyor on "any of the said days, then every such person who should have "sent any such team, draught, or plough, according to the di- "rections aforesaid, shall, according to the notice to be given, "as herein after directed, send unto the said work, for every "one so spared, three able men, there to labour as aforesaid,

Three men to be sent, or 4*s.* 6*d.* to be paid.

"or to pay to the said surveyor four shillings and sixpence in lieu "thereof; and all such persons as aforesaid shall respectively have "and bring with them such shovels, spades, picks, mattocks, and "other tools and instruments as are usual and proper for the pur- "poses aforesaid; and all the said persons and carriages shall di- "ligently perform the work and labour to which they shall be ap- "pointed by such surveyor for eight hours in every of the said "days, within such parish, township, or place, or in getting "and carrying materials in and from any other parish, town- "ship, or place, to be employed in the repair of the highways "of the parish, township, or place, for which they shall be

"required

" required to perform ſuch duty and labour as aforeſaid: And The hours of working, &c.
" if any perſon ſending a team, as aforeſaid, ſhall not ſend a
" ſufficient labourer beſides the driver, (except as herein before
" mentioned); or if any ſuch labourer, or driver, or any other
" labourer, or the driver of any cart, required by this act to per-
" form ſtatute-duty as aforeſaid, ſhall refuſe to work and labour,
" during the time above-mentioned, according to the direction
" of the ſurveyor; or if any driver ſhall refuſe to carry proper
" and ſufficient loads; it ſhall and may be lawful for ſuch ſur-
" veyor to diſcharge every ſuch team, cart, or labourer, and
" to recover from the owner of every ſuch team or cart the for-
" feiture which every ſuch perſon or perſons would have incur-
" red by virtue of this act, in caſe no ſuch team, cart, or la-
" bourer, reſpectively, had been ſent."

† *Sect.* 12. It is alſo further enacted by the above-mentioned Part of a team may be called for.
ſtatute, par. 36. " That the ſurveyor, where the employment
" for teams is of ſuch ſort that two horſes will be ſufficient for
" one cart, or where a ſtand cart with one horſe ſhall be neceſ-
" ſary, ſhall call upon any perſon liable to ſend a team, draught,
" or plough, by virtue of this act, who keeps one or more cart
" or carts, and three or more horſes, to ſend ſuch cart or carts,
" horſe or horſes, to perform his ſtatute-duty, as the ſurveyor
" ſhall find moſt convenient, and ſhall direct; and the ſurveyor
" ſhall allow every ſuch ſtand cart and one horſe as half a team,
" and every cart and two horſes as two-thirds of a team; and if
" a waggon ſhall be found neceſſary for any particular buſineſs,
" the ſurveyor may require the duty, or any part thereof, to be
" performed with ſuch waggon, by any perſon who keeps one;
" which directions of the ſurveyor ſhall be obſerved, or the per-
" ſon liable to perform ſuch duty ſhall forfeit ſuch ſum as the du-
" ty ſo required of him ſhall bear, in proportion to the forfeiture
" hereby inflicted for every neglect in performing duty with a
" team, draught, or plough."

† And further by par. 37. " Every ſuch ſurveyor ſhall, Notice and forfeiture.
" from time to time, give to, or cauſe to be left at the houſe or
" uſual place of abode of every perſon or perſons ſo liable to
" perform ſuch duty or labour, as in this act directed, four days
" notice at the leaſt of the day, hour, and place, upon which
" each of the ſaid day's duty ſhall be required to be performed;
" and every perſon or perſons making default in finding and ſend-
" ing each wain, cart, or carriage, furniſhed as aforeſaid, and
" ſuch able men with the ſame, as herein required, or in per-
" forming the ſaid duty at the time and place, and in the man-
" ner, by this act directed, ſhall, for every ſuch default or neglect
" in ſending ſuch wain, cart, or carriage, with ſuch men as
" aforeſaid, forfeit the ſum of ten ſhillings; and for every default
" in ſending every cart with one horſe and one man, three
" ſhillings;

The ſurveyor to be impartial.

" ſhillings; and for not ſending every cart with two horſes and
" one man, five ſhillings: and every perſon or perſons making
" default in ſending any ſuch labourer, and every perſon ma-
" king default in performing ſuch labour, at the time and place
" and in the manner directed by this act or in paying ſuch com-
" poſition-money for the ſame, as herein mentioned, ſhall, for
" every ſuch neglect, forfeit the ſum of one ſhilling and ſixpence
" all which forfeitures ſhall be applied for the uſe of the high-
" ways within the pariſh, townſhip, or place, where the ſame
" ſhall ariſe; and the ſaid ſurveyor ſhall fairly and equally de-
" mand and require ſuch duty and labour from every perſon or
" perſons liable to perform the ſame, according to the direction
" of this act, without favour or partiality to any perſon or perſons
" whomſoever: and if in any pariſh, townſhip, or place, it
" ſhall not be neceſſary to call forth the whole duty in any year
" it ſhall be abated in a juſt and equal proportion amongſt all per-
" ſons liable to the ſame; and the ſaid ſurveyor may and ſhall

Application of the forfeitures.

" and he is hereby required, with all convenient ſpeed, after
" default made in performance of ſuch duty or labour as afore-
" ſaid, to proceed for the recovery of the penalties or forfeitures
" hereby inflicted for the ſame reſpectively, in manner herein-
" after directed, ſo that the ſame may be recovered before he
" makes up his accounts in the manner directed by this act."

Compounding.

† *Sect.* 13. But it is alſo further enacted by par. 38. "That
" any perſon or perſons liable to perform the ſaid duty, by ſend-
" in one or more team or teams, draught or draughts, plough or
" ploughs, with men, horſes, or oxen, in manner aforeſaid,
" ſhall and may compound for the ſame, if he, ſhe, or they
" ſhall think fit, by paying to the ſaid ſurveyor, at the time
" and in the manner, herein after mentioned, ſuch ſum or ſums
" of money as the juſtices of the peace for the limit wherein ſuch
" pariſh, townſhip, or place, ſhall be, or the major part of
" them, at their ſaid ſpecial ſeſſions, to be held in the firſt week
" after *Michaelmas* quarter ſeſſions in every year, ſhall adjudge
" and declare to be reaſonable, not exceeding ſix ſhillings, nor
" leſs than three ſhillings, for each team, draught, or plough,
" for each day; and in default of their adjudging and declaring
" the ſame, the ſum of four ſhillings and ſix pence for and in
" lieu of every ſuch day's duty for each team, draught, or plough;
" and for every cart and one horſe or beaſt of draught, two ſhil-
" lings; and for every cart with two horſes or beaſts of draught,
" three ſhillings, for and in in lieu of every day's duty; and every
" inhabitant liable to perform ſuch duty or labour, as aforeſaid,
" and not chargeable in any other reſpect, as aforeſaid ſhall and
" may compound for the ſame, if he, ſhe, or they, ſhall think
" fit, by paying to the ſurveyor the ſum of four-pence for and in
" lieu of every ſuch day's duty or labour reſpectively, at the
" time,

time and in the manner, herein-after directed for the payment of compoſition-money.

Power of juſtices to direct duty in any particular pariſh, &c.

† Provided by par 39. "That if it ſhall appear to the juſtices, at their ſpecial ſeſſions, to be held in the week next after *Michaelmas* quarter ſeſſions, that, from the directions herein before given for the performing and compounding the ſtatute-duty, there will be difficulty in procuring the neceſſary carriages or a ſufficient number of labourers, for the repair of the highways, in any particular pariſh, town-ſhip, or place, within their reſpective limits, without paying high and extravagant prices for the ſame, it ſhall and may be lawful for ſuch juſtices to order and direct the team-duty hereby required, or ſo much thereof as they ſhall think fit, to be performed in kind, within every ſuch pariſh, townſhip, or place, except in reſpect of ſuch teams as belong to perſons who do not occupy lands, tenements, woods, tithes or hereditaments, of the annual value of thirty pounds within the ſame; and alſo to order the labourers, liable by this act to perform or compound for ſtatute-duty, or ſuch part of them as they ſhall think fit, to perform ſix days labour upon ſuch highways in kind, in caſe ſo many days duty ſhall be required, upon being paid for ſuch labour the uſual and cuſtomary wages given to labourers, in ſuch pariſh, townſhip, or place, deducting thereout the ſum of four-pence for each day's duty ſo performed, being the compoſition hereby allowed for labourers: provided, that if part of ſuch teams or labourers only are required, it ſhall be directed by the ſaid order of the juſtices in ſome given proportion, as one half, third, or fourth part thereof; and the ſurveyor ſhall, in that caſe, at a publick veſtry for ſuch pariſh, townſhip, or place, put the names of all the perſons liable by this act to ſend ſuch teams into one hat or box, and the names of all the perſons liable to perform ſuch labour, into another hat or box, and ſome inhabitant then preſent ſhall draw out ſuch number from each as ſhall be equal to the proportion ſo ordered by the ſaid juſtices, and the perſons ſo drawn ſhall perform ſuch duty in kind for that year; and that if any ſuch order ſhall be made or continued in the ſubſequent year, the ſame method ſhall be obſerved, but the names drawn in the preceding year ſhall not be put into ſuch hat or box; and in every ſucceeding year ſuch method and regulation ſhall be obſerved by ſuch ſurveyor, as to render the duty ſo required to be performed in kind as equal amongſt the ſeveral perſons liable thereto as may be: which order of the ſaid juſtices, ſo far as the ſame ſhall be extended, ſhall ſuperſede the ſaid power or liberty of compounding, and ſhall be binding and effectual to all intents and purpoſes whatſoever, and ſhall continue in force until it ſhall be diſcharged or varied by the

"juſtices

" juſtices at ſome ſubſequent ſpecial ſeſſions for the high
" within ſuch limit, to be held in the week next after Mic
" *mas* quarter ſeſſions.

Power of mitigation.

† It is alſo further enacted by par. 40. " That where
" perſon ſhall keep a team, draught, or plough, and ſhall
" occupy lands, tenements, woods, tithes, or hereditament
" the value of thirty pounds *per annum*, in the pariſh, town
" or place, where he ſhall reſide, but ſhall in part maintai
" horſes and beaſts of draught uſed in ſuch team upon or
" lands which he ſhall occupy in one or more adjacent p
" or pariſhes, it ſhall and may be lawful for the ſaid juſtice
" ſome ſpecial ſeſſions, to mitigate and reduce the duty or c
" poſition ſo required to be performed or paid by ſuch perſo
" perſons, in ſuch manner, and to ſuch ſum, as they ſhall
" juſt and reaſonable.

Surveyor to gave notice of the time and place for compounding.

† Provided, par. 41. " That the ſaid ſurveyor of every p
" townſhip, or place, ſhall, on ſome *Sunday* in *Novemb*
" every year, cauſe ten days notice at leaſt to be given i
" church or chapel of ſuch pariſh, townſhip, or place, a
" there be no church or chapel, or no ſervice performed the
" then at the moſt publick place there, and repeat the lik
" tice in ſuch church, chapel, or place, on the next ſucce
" *Sunday*, of the time and place when and where the pe
" permitted under the authority of this act, and inclined to
" pound for the ſaid duty, in manner aforeſaid, may ſigni
" ſuch ſurveyor their intention to compound; and all pe
" ſignifying the ſame, who ſhall then, or within the ſpa
" one calendar month afterwards, pay to ſuch ſurveyor the
" poſition authoriſed and allowed by this act, ſhall be diſc
" ed from the performance of ſuch duty, which compo
" money ſhall be employed by the ſurveyor for the uſe o
" highways; and that no compoſition ſhall be permitted, u
" the ſame ſhall be paid at the day, or within the time afore
" but in caſes where the occupation of any lands, tenem
" woods, tithes, or hereditaments, ſhall be changed, o
" new occupant or inhabitant ſhall come to reſide in ſuch pa
" townſhip, or place, after the time appointed for ſuch co
" ſition, then the perſon or perſons occupying ſuch lands,
" ments, woods, tithes, or hereditaments, or ſo reſiding in
" pariſh, townſhip, or place, ſhall be allowed to compou
" manner aforeſaid: provided, he, ſhe or they, ſhall pa
" ſaid compoſition-money to the ſaid ſurveyor within fou
" days after he, ſhe, or they, ſhall enter upon ſuch lands,
" ments, or hereditaments, or ſhall come to reſide in ſuch p
" townſhip, or place; and every tenant or occupier o
" lands, tenements, woods, tithes, or hereditaments, wh
" tends to quit the poſſeſſion thereof, within ſix calendar m

m the time fixed for making such composition, shall and y compound for half the duty hereby required, and the ceeding tenant or occupier shall and may, in that case, com- nd or perform the duty in kind for the other half thereof: d if the surveyor shall receive from any person or persons a mposition for more duty than shall be required from the other abitants and occupiers within the same parish, township, place, for the same year, he shall repay such extraordinary mposition-money to such person or persons, so as to bring duty to an equality amongst all such inhabitants and oc- iers.

How the compositions shall be paid, &c.

† *Sect.* 14. And it is further enacted by par. 42. where person shall keep a draught or plough, and no carriage, shall pay to the surveyor the sum of one shilling for every se or pair of oxen or neat cattle, used in such draught or ugh, for every day's statute-duty on the day such duty is re- red to be performed, or pay according to the rate aforesaid the lands, tenements, woods, tithes, and hereditaments, ich he shall occupy in such parish, township, or place, at option of the surveyor. And by par. 43. the inhabitants very parish, township, or place, at some vestry, or other blick meeting, held pursuant to this act, may appoint three nths in every year, within which no statute-duty shall be formed. One month in the spring to be called the *feed nth*; one month in the summer, for the hay harvest; and one er month in the summer, for the corn harvest; provided, t notice in writing, be given of the times so appointed to the rveyor of such parish, township, or place respectively, and o to the surveyor of every turnpike road lying within the me, within three days after every such meeting and fourteen ys at least before the beginning of each of such months.

Duty where no carriage is kept.

Of the feed month.

N. B. In the exposition of the former statutes upon this sub- viz. The 2 and 3 Philip and Mary, c. 8. s. 2. The 22 2. c. 12. s. 8. and 9. The 18 Eliz. c. 10. sect. 2. and 3. The 7 and 8 Will. 3. c. 29. the language of which is, with variation, pursued by the above statute, 13 Geo. 3. c. 78. llowing opinions have been holden.

Enumeration of the statutes upon this subject recited in the former edition.

ect. 15. First, That (a) persons in holy orders are within purview of them, in respect of their spiritual professions, as h as any other persons whatsoever, in respect of any other ssions, for the words are general, and there is no kind of mation that any particular persons shall be exempted more others. (8)

(a) 3 Keb. 255, 476, 1 Ventri's 273. Watson 40. 2 Inst. 704.

(8) But by 30 Geo. 2. c. 25. s. 23. persons

g for themselves as privates in the militia are exempted from statute work during the of such service.

Sect.

(a) Raym. 186. 3 Keble 567, 468, 568. Vide Dalt. c. 26. 2 Keble 617.

Sect. 16. Secondly, (a) That he who keeps ſeveral draughts in a pariſh is bound to ſend a team for each draught, whether he occupy any land in the pariſh or not; and in like manner, he who occupies ſeveral plough-lands, ought to ſend a team for each plough-land, whether he keeps any draught, or not.

(b) Palm. 789. 2 Roll 412.

Sect. 17. Thirdly, That (b) notwithſtanding the words of the ſtatute extend only to the occupiers of lands, yet if the owner neither occupy them, nor let them, but ſuffer them to lie freſh, he ſhall be charged as much as if he had occupied them, for there is no reaſon that the publick ſhall ſuffer for his negligence.

Dalt. c. 26.

Sect. 18. Fourthly, That it is no excuſe for the inhabitants of a pariſh, being indicted at common law for not repairing the highways, That they have done the full work required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes.

Chapter 26,

N. B. DALTON is of opinion, that he who keeps a draught and but two horſes, ought to attend therewith at the times appointed, and that if he carry with them ſuch loads as they are able to draw, he ſhall be excuſed.

How the funds of turnpike roads may be applied to the ſtatute repair of the highways.

† *Sect.* 19. And whereas there may be *turnpike roads* in a ſtate and condition of repair, that the ſtatute duty required to be performed upon them may be diſpenſed with, &c. It is therefore enacted by 13 Geo. 3. c. 84. ſect. 58. "That "the juſtices at any ſpecial ſeſſions, upon application to them "made by the ſurveyor of any place, in which ſuch turnpike "road lies, may ſummon the clerk and ſurveyor of ſuch turn- "pike road to appear before them, at ſome other ſpecial ſeſſions, "and then and there to produce before them a ſtate of the re- "nues and debts belonging to ſuch turnpike road, and the "juſtices may then and there enquire into the ſtate and con- "tion of the repairs thereof, and alſo of ſuch other highways "and if it ſhall appear to them, upon full and clear evidence "that the whole or any part of ſuch ſtatute duty may be con- "niently diſpenſed with from ſuch turnpike roads, without "dangering the ſecurities for the money advanced upon the "dit of the tolls thereof, and that ſuch ſtatute duty is want- "for the repairs of the other highways within ſuch parish, "townſhip, or place, the ſaid juſtices may order the whole "part of ſuch ſtatute duty to be performed upon the highways "not being turnpike, within ſuch pariſh, townſhip, or place, "under the direction of the ſurveyor thereof, during ſuch time "as to them ſhall ſeem juſt and reaſonable."

Sect. 20. As to the second point, *viz.* Who may be assessed to a rate made for the defraying of the extraordinary expences of such repairs, it is recited by the above mentioned statute of 13 Geo. 3. c. 78. par. 30. "That in some parishes, townships, or places, there may not be sufficient materials for the repair of the highways within the same, nor within the waste grounds, common grounds, rivers or brooks, of any other parish, township, or place, lying within a convenient distance from such highway, by reason whereof the surveyor of such highway may be forced to buy such materials, and to make recompence and satisfaction to the owner or occupier of inclosed lands, for damage which may be done by getting and carrying thereof: and whereas no provision is made for raising a fund to reimburse the expences thereof, and also such expences as the said surveyors shall incur, by erecting guide-posts, or other posts or stones, and making or repairing such trunks tunnels, plats, bridges, or other, as aforesaid, and by rendering satisfaction for damages done to lands by the making of new ditches or drains, nor for any salary to be paid by such parish, township, or place, to the surveyor, as aforesaid;" it is therefore enacted, "That upon application by such surveyor to the justices of the peace, at their special sessions, and oath made of the sum or sums of money which he hath *bona fide* laid out and expended, or which will be required for the purposes aforesaid, the said justices, or any two or more of them, shall, and they are hereby impowered, by warrant under their hands and seals, to cause an equal assessment to be made, for the purposes aforesaid, upon the occupiers of lands, tenements, woods, tithes, and hereditaments, within such parish, township, or place, where such money shall be so expended or laid out; and the same shall be made and collected by such person or persons, and allowed in such manner, as the said justices, by their order at such sessions, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for according to the direction of the said justices, for the purposes aforesaid; and the said assessment shall be levied in such manner as hereinafter mentioned: provided nevertheless, That no such assessment to be made for those or any of those purposes, in any one year, shall exceed the rate of sixpence in the pound, of the yearly value of the lands, tenements, woods, tithes, and hereditaments, so to be assessed."

The 22 Car. 2. c. 10, 11.
The 3 and 4 Will. and Mar. c 12.
The 7 and 8 Will. 3. c. 29. s. 4. which were here recited in the former edition of this work are repealed by 7 Geo. 3. c. 42.

(9) An order for imposing a rate was quashed, because it did not appear but that the statute duty was sufficient, and because only the occupiers of land were charged, whereas others are equally liable. Str. 315. Sed. Vide Forts. 327.

Sect. 21. And it is further enacted by the abovementioned statute of 13 Geo. 3. c. 78. par. 45. "That if upon application of the surveyor of the highways for any parish, township, or place, to the justices of the peace for the limit wherein such parish, township, or place, lieth, at their general or "quarter

Vide the case of the King v. Inh. or Newton in Cheshire.

In what manner an assessment may be made.

" quarter sessions of the peace, or at some special sessions for
" highways, the said justices shall be fully satisfied, by p
" upon oath, that the duty directed to be performed, and
" money authorised to be collected and received, h s been p
" formed, applied, and expended, according to the direct
" of this act, or shall be fully satisfied that the common hi
" ways, bridges, causeways, streets, or pavements, belongin
" such parish, township, or place, are so far out of order
" they cannot be sufficiently amended and repaired, pav
" cleansed, and supported, by the means herein-before prese
" ed, (notice being first given of such intended application at
" church or chapel of such parish, township, or place, on s
" *Sunday* preceding such quarter or special sessions; or if
" place be extraparochial, notice in writing being first given
" such intended application to some of the principal inhabit
" residing in such extraparochial place, a week at least be
" such general or special sessions; and then, and in any of
" said cases, an equal assessment upon all and every the occu
" of lands, tenements, woods, tithes, and hereditaments, wi
" any such parish, township, or place, shall or may be made
" collected by such person and persons, and allowed in s
" manner, as the said justices, by their order, at such genera
" special sessions, shall direct and appoint in that behalf;
" the money thereby raised shall be employed and accounted
" according to the orders and directions of the said justices,
" and towards the amending, repairing, paving, cleansing,
" supporting such highways, causeways, streets, pavements,
" bridges, from time to time, as need shall require.

Not to exceed 9d. in the pound.

† *Sect.* 22. And it is further enacted by the same statute, 46. " That the assessment herein-last before authorised, and
" assessment herein-before authorised, for buying materials, m
" ing satisfaction for damages, erecting guide-posts, and pay
" the surveyor's salary, (vide post.) shall not together in any
" year exceed the rate of nine-pence in the pound of the yea
" value of the lands, tenements, woods, tithes, and hered
" ments, so to be assessed.

N. B. The provision of 3 & 4 W. & M. upon this subject were recited in the former edition, but that statute is repealed by 7 Geo. 3. c. 42.

† *Sect.* 23. As to the third point, *viz.* What other provis have been made to this purpose, it is enacted by the said statute 13 Geo. 3. c. 78. par. 47. " That no fine, issue, penalty, or
" feiture, for not repairing the highways, or not appearing to
" indictment or presentment for not repairing the same, shall be
" after be returned into the Court of Exchequer, or other co
" but shall be levied by and paid into the hands of such perso
" persons residing in or near the parish, township, or place, wh
" the road shall lie, as the court imposing such fines, issues, pen
" ties, or forfeitures, shall order and direct, to be applied towa

the repair and amendment of such highways; and the person or persons so ordered to receive such fine shall, and is hereby required to receive, apply, and account for the same, according to the direction of such court, or, in default thereof, shall forfeit double the sum received; and if any fine, issue, penalty, or forfeiture, to be imposed on any such parish, township, or place, for not repairing the high-ways, or not appearing as aforesaid, shall hereafter be levied on any one or more of the inhabitants of such parish, township, or place, that then such inhabitant or inhabitants shall and may make his or their complaint to the justices of the peace, at their special sessions; and the said justices are hereby impowered and authorised, by warrant under their hands and seals, to cause a rate to be made, according to the form and manner herein last before prescribed, for the reimbursing such inhabitant or inhabitants the monies so levied on him or them as aforesaid; which rate so made, and confirmed by any two justices, shall be collected and levied by the surveyor of the highways of such parish, township, or place, so presented or indicted, as aforesaid; and the said surveyor shall, within one month next after the making and confirming the rate aforesaid, collect, levy, and pay unto such inhabitant or inhabitants the money so levied on him or them as aforesaid." (10)

Fines, &c. how levied and applied.

(10) If a parish consisting of two districts, which are bound to repair separately, be convicted for not repairing the road in one of the districts, the other district having no notice of the indictment, the court will consider it as being substantially the conviction of the one district, and if the fine be levied on an inhabitant of the other, will grant a *mandamus* for a rate to be levied on the district bound to repair the indicted part of the road. But the mandamus must be special, suggesting that the part of the highway, which was the subject of the indictment, lay wholly in the township indicted, and that the two townships were separately bound to repair their respective parts of the highway, in order to afford the indicted township an opportunity of traversing the facts. Douglas 422. Strange 211.

Sect. 24. Also the later statutes (a) which have imposed any penalties on surveyors of the highways, or others for any offences relating to the highways, have generally ordained that the whole or part thereof, shall be applied to the repairs of the highways of the places wherein the offence shall be committed, as will more fully appear in the subsequent part of this chapter.

(a) This relates to the statutes now repealed.

† *Sect.* 25. As to the fourth point, *viz.* In what manner the profits of lands settled in trust for the repairs of the highways shall be employed, it is enacted by the above mentioned statute of 13 Geo. 3. c. 78. par. 52. "That where any lands "have been, or shall be given, for the maintenance of causeways, pavements, highways, and bridges, all such persons "who are, or shall be enfeoffed or trusted with any such "lands, shall let them to farm at the most improved yearly "value, without fine; and that the justices of the peace, in "their

The 22 Car. 2. c. 12. s. 2. recited in the former editions is repealed by 7 Geo. 3. c. 42.

Perſons unſeoffed with lands.

" their open ſeſſions, ſhall and may inquire, by ſuch ways an
" means as they ſhall think fitting, into the value of all ſuc
" lands ſo given, or to be given, and order the improvement an
" employment of the rents and profits thereof according to th
" will and direction of the donor of ſuch lands, if they find th
" the perſons ſo intruſted have been negligent or faulty in the per
" formance of their truſt, except ſuch lands have been given fo
" the uſes aforeſaid to any college or hall in either of the univer
" ſities of this kingdom, which have viſitors of their own."

This ſtatute was repealed by 7 Geo. 3. c. 42. but it is revived by 8 Geo. 3. c. 5. ſect. 3.

Sect. 26. As to the third general head of this chapter, viz. I
what manner the highway is to be enlarged, it is enacted by t
Ed. 1. ſtat. 2. commonly called the ſtatute of *Wincheſter*, chap.
" That highways leading from one market-town to another ſha
" be enlarged, ſo that there be neither dyke, tree, nor buſ
" whereby a man may lurk to do hurt, within two hundred fo
" of the one ſide, and two hundred foot of the other ſide of th
" way ſo that the ſtatute ſhall not extend to aſhes, nor unto gre
" trees, &c, and if by default of the lord that will not avoid th
" dyke, underwood, or buſhes, in the manner aforeſaid, any rob
" beries be done therein, the lord ſhall be anſwerable for the f
" lony, and if murder be done, the lord ſhall make a fine at th
" the king's pleaſure: and if the lord be not able to fell the un
" derwoods, the country ſhall aid him therein. And the kin
" willeth, that in his demean lands and woods within his fore
" and without, the ways ſhall be enlarged, as before is ſai
" And if per-caſe a park be taken from the highway, it is requi
" ſite that the lord ſhall ſet his park the ſpace of two hundre
" foot from the highways, as before is ſaid, or that he make ſuc
" a wall, dyke, or hedge, that offenders may not paſs nor re
" turn to do evil."

(11) If a highway be not much wanted for the uſe of the public, an indictment will not lie for ſuffering it to be out of repair. Sayer 93.

† *Sect.* 27. It is alſo enacted by the 13 Geo. 3. c. 78. pa
15. " That the ſaid ſurveyors of the highways ſhall make, ſup
" port, and maintain, or cauſe to be made, ſuported, and mai
" tained, every publick (11) cartway leading to any mark
" town, twenty feet wide at the leaſt; and every publick horſe
" way or driftway, eight feet wide at the leaſt, if the ground be
" tween the fences incloſing the ſame will admit thereof."

Widening roads.

† *Sect.* 28. But by par. 16. " Where it ſhall appear upon th
" view of any two juſtices, that the ground or ſoil of any highwa
" between the fences thereof is not of ſufficient breadth, and ma
" be conveniently widened and enlarged, or that the ſame can
" not be conveniently enlarged, and made commodious for tra
" vellers, without diverting and turning the ſame; ſuc

" uſtice

"justices shall, and they are hereby impowered, within their "respective jurisdictions, to order (12) such highways respectively to be widened and enlarged, or diverted and turned, "in such manner as they shall think fit, so that the said highways, "when enlarged and diverted, shall not exceed thirty feet in "breadth; and that neither of the said powers do extend to "pull down any house or building, or to take away the ground "of any garden, park, paddock, court, or yard; and, for "the satisfaction of the person or persons, bodies politick or corporate, who are seised or possessed of, or interested in their "own right, or in trust for any other person or persons, in the "said ground that shall be laid into the said highways respectively, so to be enlarged, or through which such highway so to be "diverted and turned, shall go, the said surveyor, under the "direction, and with the approbation of the said justices, shall, "and is hereby impowered to make an agreement with him, her, "or them, for the recompence to be made for such ground, and "for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person or persons, "bodies politick or corporate, that may be injured by the enlarging, altering, or diverting such highways respectively, for "the satisfaction to be made to him, her, or them respectively, "as aforesaid: and if the said surveyor, under the direction, "and with the approbation of the said justices, cannot agree with "the said person or persons, bodies politick or corporate, or if "he, she, or they, cannot be found, or shall refuse to treat, or "take such recompence or satisfaction as shall be offered to them "respectively, by such surveyor; then the justices of the peace, "at any general quarter sessions to be holden for the limit where-"in such ground shall lie, upon certificate in writing, signed by "the justices making such view as aforesaid, of their proceed-"ings in the premises, and upon proof of fourteen days notice in "writing having been given by the surveyor of such parish, "township or place, to the owner, occupier or other person or "persons, bodies politick or corporate, interested in such ground, "or to his, her, or their guardian, trustee, clerk, or agent, "signifying an intention to apply to such quarter sessions for the "purpose of taking such ground, shall impannel a jury of twelve "disinterested men out of the persons returned to serve as jury-"men at such quarter sessions; and the said jury shall, upon their "oaths, to the best of their judgment, assess the damages to be "given, and recompence to be made, to the owners and others "interested as aforesaid in the said ground, for their respective "interests, as they shall think reasonable, not exceeding forty "years purchase for the clear yearly value of the ground so laid

(12) This power given to two justices to order *any* highway to be widened, extends to roads repairable *ratione tenuræ*; and upon disobedience to such order, the party, may either be proceeded against summarily under the statute, or by indictment as an offence at common law. Cowper 648. Vide also 2. Burr. 799.

Surveyors to recompence owners of lands.

Which may be estimated by a jury, &c.

On payment of money aſſeſſed the ground to be deemed a publick high-way.

" out, and likewiſe ſuch recompence as they ſhall think reaſon
" able, for the making of new ditches and fences on the ſide
" ſides of the ſaid highways that ſhall be ſo enlarged or diverte
" and alſo ſatisfaction to any perſon or perſons, bodies poli
" tick or corporate, that may be otherwiſe injured by the enlar
" ing or diverting the ſaid highways reſpectively: and upo
" payment or tender of the money ſo to be awarded and aſſe
" ſed to the perſon or perſons, bodies politick or corporate, i
" titled to receive the ſame, or leaving it in the hands of th
" clerk of the peace of ſuch limit, in caſe ſuch perſon or perſon
" bodies politick or corporate, cannot be found or ſhall refu
" to accept the ſame, for the uſe of the owner of, or others int
" reſted in, the ſaid ground, the intereſt of the ſaid perſon or per
" ſons, bodies politick or corporate, in the ſaid ground, ſhall be fo
" ever diveſted out of them, and the ſaid ground, after ſuc
" agreement or verdict as aforeſaid, ſhall be eſteemed and take
" to be a publick highway, to all intents and purpoſes whatſo
" ever; ſaving nevertheleſs to the owner or owners of ſuc
" ground all mines, minerals, and foſſils, lying under the ſam
" which can or may be got without breaking the ſurface of th
" ſaid highway; and alſo all timber and wood growing upo
" ſuch ground, to be fallen and taken by ſuch owner or owner
" within one month after ſuch order ſhall have been made, or i
" default thereof, to be fallen by the ſaid ſurveyor or ſurveyor
" within the reſpective months aforeſaid, and laid upon the lan
" adjoining, for the benefit of the ſaid owner or owners: an
" where there ſhall not appear ſufficient money in the hands o

Where there is not money ſufficient aſſeſſments may be raiſed by order of the juſtices of the quarter ſeſſions.

" the ſurveyor or ſurveyors, for the purpoſes aforeſaid, then th
" ſaid two juſtices, in caſe of agreement, or the ſaid court o
" quarter ſeſſions, after ſuch verdict as aforeſaid, ſhall order a
" equal aſſeſſment to be made, levied, and collected, upon al
" and every the occupiers of lands, tenements, woods, tithe
" and hereditaments, in the reſpective pariſhes, townſhips, o
" places, where ſuch highways ſhall lie, and direct the mone
" to be paid to the perſon or perſons, bodies politick or corpo
" rate, ſo intereſted, in ſuch manner as the ſaid juſtices, o
" court of quarter ſeſſions reſpectively, ſhall direct and appoint
" and the money thereby raiſed ſhall be employed and account
" for, according to the order and direction of the ſaid juſtices
" or court of quarter ſeſſions reſpectively, for and towards th
" purchaſing the land to enlarge or divert the ſaid highways
" and for the making the ſaid ditches and fences, and alſo ſatis
" faction for the damages ſuſtained thereby; and the ſaid aſſeſ
" ment, if not paid within ten days after demand, ſhall, by or
" der of the ſaid juſtices, or court of quarter ſeſſions reſpective
" ly, be levied by the ſaid ſurveyor, in the manner herein-af
" ter mentioned: provided that no ſuch aſſeſſment to be made

" in

in any one year ſhall exceed the rate of ſixpence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments, ſo aſſeſſed." Not exceeding 6d. in the pound.

† *Sect.* 29. And it is further enacted by the ſaid ſtatute, par. 7. "That when any ſuch new highways ſhall be made as aforeſaid, the old highway ſhall be ſtopped up, and the land and ſoil thereof ſhall be ſold by the ſaid ſurveyor; with the approbation of the ſaid juſtices, to ſome perſon or perſons whoſe lands adjoin thereto, if he, ſhe, or they, ſhall be willing to purchaſe the ſame; if not to ſome other perſon or perſons, for the full value thereof: but if ſuch old road ſhall lead to any lands, houſe, or place, which cannot, in the opinion of ſuch juſtices reſpectively, be accommodated with a convenient way and paſſage from ſuch new highway, which they are hereby authoriſed to order and lay out, if they find it neceſſary; then, and in ſuch caſe, the ſaid old highway ſhall only be ſold ſubject to the right of way and paſſage to ſuch lands, houſe, or place reſpectively, according to the ancient uſage in that reſpect; and the money ariſing from ſuch ſale, in either of the ſaid caſes, ſhall be applied towards the purchaſe of the land where ſuch new highway ſhall be made: and, upon payment or tender of the money ſo to be agreed for as aforeſaid, and upon a certificate being ſigned by the ſaid two juſtices, or by the chairman of the ſaid court of quarter ſeſſions, in caſe the ſame ſhall be determined there, deſcribing the lands ſo ſold, and expreſſing the ſum ſo agreed for, and directing to whom the ſame ſhall be paid, and upon the purchaſer's taking a receipt for ſuch purchaſe-money from the perſon intitled to receive the ſame, by an indorſement on the back of ſuch certificate, the ſoil of ſuch old high-way ſhall become veſted in ſuch purchaſer and his heirs; but all mines, minerals, and foſſils, lying under the ſame, ſhall continue to be the property of the perſon or perſons who would, from time to time, have been intitled to the ſame, if ſuch old highway had continued there. Old highway and ſoil may be ſold by the ſurveyor, ſubject to ancient right of way and paſſage. Mines and minerals reſerved to the owners.

† *Sect.* 30. And it is alſo enacted, par. 18. "That in caſe ſuch jury ſhall give in and deliver a verdict for more monies, as a recompence for the right, intereſt, or property, of any perſon or perſons, bodies politick or corporate, in ſuch lands or grounds, or for the making ſuch fence, or for ſuch damage or injury to be ſuſtained by him, her, or them reſpectively, as aforeſaid, than what ſhall have been propoſed and offered by the ſaid ſurveyor, before ſuch application to the ſaid court of quarter ſeſſions as aforeſaid; that then, and in ſuch caſe, the coſts and expences attending the ſaid ſeveral proceedings ſhall be borne and paid by the ſur- Coſts of proceedings by whom payable.

" veyor of the ſaid highway, out of the monies in his or their
" hands, or to be aſſeſſed and levied by virtue and under the
" powers of this act; but if ſuch jury ſhall give and deliver
" verdict for no more, or for leſs monies than ſhall have been
" offered and propoſed by the ſaid ſurveyor before ſuch appli-
" cation to the ſaid court of quarter ſeſſions; that then the ſaid
" coſts and expences ſhall be borne and paid by the perſon or
" perſons, bodies politick or corporate, who ſhall have refuſed
" to accept the recompence and ſatisfaction ſo offered to him
" her, or them, as aforeſaid."

† *Sect.* 31. And it is alſo further enacted by the ſaid ſtatute par. 19. " That when it ſhall appear, upon the view (13) of
" any two or more of the ſaid juſtices of the peace, that any pub-
" lick highway, not in the ſituation herein-before deſcribed, or
" publick bridleway or footway, may be diverted, ſo as to make
" the ſame nearer or more commodious to the publick, and the
" owner or owners of the lands and grounds through which ſuch
" new highway, bridleway, or footway, is propoſed to be made
" ſhall conſent thereto, by writing under his or their hand and
" ſeal, or hands and ſeals, it ſhall and may be lawful, by order
" of ſuch juſtices, at ſome ſpecial ſeſſions, to divert and turn
" and to ſtop up ſuch footway, and to divert, turn, and ſtop up
" and incloſe, ſell, and diſpoſe of ſuch old highway or bridle-
" way, and to purchaſe the ground and ſoil for ſuch new high-
" way, bridleway, or footway, by ſuch ways and means, and
" ſubject to ſuch exceptions and conditions, in all reſpects, as
" herein-before mentioned with regard to highways to be wid-
" dened or diverted; and where any ſuch highway, bridleway
" or foot-way, herein laſt before deſcribed, ſhall be ſo ordered
" to be ſtopped up or incloſed, and ſuch new highway, bridle-
" way, or footway, ſet out and appropriated in lieu thereof, as
" aforeſaid, ſhall and may be lawful for any perſon or perſons
" injured or aggrieved by any ſuch order or proceeding, or
" by the incloſure of any road or highway, by virtue of any
" inquiſition taken upon any writ of *ad quod damnum* to make
" his or their complaint thereof, by appeal (14) to the ju-

(13) The fact of non-repair is traverſable when a juſtice preſents a high-way on his own view. Rex, v. Juſ. Wilts. 1 Black. 467.

(14) Though the appeal is directed to the next quarter ſeſſions, yet the juſtices may adjourn the quarter ſeſſions itſelf to another day, or they may adjourn the particular matter to a ſubſequent ſeſſions. And this appeal was thought by Lord Hardwicke to be a waiver to any objection or ſurprize, with reſpect to the male execution of the writ of *ad quod damnum*; for the ſtatute has put the juſtices in the room of the traverſe, and if the party inſtead of appealing had traverſed the inquiſition and iſſue had been taken on it and a verdict found, he could not have applied to the court of Chancery upon a ſuggeſtion of ſurprize, and a fraudulent and clandeſtine execution of the writ. And even upon ſuch an enquiry, the court will not regard any complaint upon the ground of public inconvenience, for that would be ſetting up a juriſdiction in oppoſition to a juriſdiction appropriated by the act of parliament to the quarter ſeſſions only: but if a jury have manifeſtly done contrary to the general good of the country, it may afford a ſtrong corroboration of evidence of ſurprize. 3 Atk. 770.—N. B. It is not neceſſary for the ſheriff to give formal notice of the execution of the writ; it is ſufficient if the jury be ſummoned impartially, and the inquiſition be made in a fair and open manner.

" tice

tices of the peace, at the next general quarter ſeſſions, which ſhall be holden within the limit where the ſame ſhall lie, after ſuch order made, or proceeding had, as aforeſaid, upon giving ten days notice, in writing, of ſuch appeal to the ſurveyor and party intereſted in ſuch incloſure, if there ſhall be ſufficient time for that purpoſe; if not, ſuch appeal may be made upon the like notice to the next ſubſequent quarter ſeſſions of the peace; which courts of quarter ſeſſions are hereby reſpectively authoriſed and impowered to hear and finally determine ſuch appeal; and if no ſuch appeal be made, or, being made, ſuch order and proceedings ſhall be confirmed by the ſaid court, the ſaid incloſures may be made, and the ſaid ways ſtopped, and the proceedings thereupon ſhall be binding and concluſive to all perſons whomſoever; and the new highway, bridleway, or footway, ſo to be appropriated and ſet out, ſhall be, and for ever after continue, a publick highway, bridleway, or footway, to all intents and purpoſes whatſoever; but no incloſures of ſuch old highways or bridleway, or ſtoppage of ſuch footway, ſhall be made, until ſuch new highways, bridleway, or footway, ſhall be completed, and put into good condition and repair, and ſo certified by two juſtices of the peace, upon view thereof, which certificate ſhall be returned to the clerk of the peace, and inrolled amongſt the records of ſeſſions; but from and after ſuch certificate, ſuch old highways, bridleway, or footway, ſhall and may be ſtopped up, and the ſoil of ſuch old highways or bridleway ſold, in the manner, and ſubject to the reſervations and reſtrictions herein-before mentioned with reſpect to highways to be enlarged or diverted by virtue of this act: and where any highway, bridleway, or footway, hath been diverted and turned above twelve months, either from neceſſity, where the ſame have been deſtroyed by ſtoods, or ſlips of the ground on which they were made, or from other cauſes and motives, if new highways, bridleways, or footways, have been made in lieu thereof, nearer or more commodious to the publick, and the ſame have been acquieſced in, and no ſuit or proſecution hath been commenced for the diverting or turning the ſame, every new highway, bridleway, or footway, ſet out and uſed in the place of that ſo diverted and turned, ſhall from henceforth be the publick highway, bridleway, or footway, to all intents and purpoſes whatſoever; and all perſons liable to the repair of any ſuch old highways, bridleway, or footway, ſo diverted and turned, or to be diverted and turned, as aforeſaid, ſhall, in the ſame manner, be and continue liable to the repair of ſuch new highways, bridleway, or footway, except where any agreement ſhall have been made relative to ſuch repairs between the parties intereſted therein,

Concerning ways diverted above twelve months.

Vide Douglas 749. B. R. H. 2 Shower 28. Levinz 1234. W. Jones 296. Ld. Raym. 725. Godbolt 4, 52. 3 Comm 36. 1 Comin, D. 67.

" which

" which hath laid the burthen thereof, or any part thereof
" upon any other perſon or perſons, in which caſe the ſame ſhall
" be obſerved."

How the old highways or the lands lying between the fences incloſing the ſame ſhall be diſpoſed of.

† *Sect.* 32. But it is provided by the ſaid ſtatute, par. 20. " That no common land, lying between the fences of any old
" highway to be ſtopped up or incloſed by virtue of this act
" ſhall be incloſed; and where the land lying between the fences
" of ſuch highway, not being common land, ſhall, upon a
" medium, exceed thirty feet in breadth, and not extend
" fifty feet in breath, the ſame ſhall not be ſtopped up or incloſ-
" ed, until ſatisfaction ſhall be made to the owner of ſuch land
" for ſo much thereof as ſhall exceed the ſaid breadth of thirty
" feet; and if the parties cannot agree in the ſatisfaction ſo to
" be made, the ſame ſhall be adjuſted by the ſaid juſtices, or
" the jury, if a jury ſhall be impanelled; and if the land be-
" tween the fences incloſing ſuch highways, not being common
" land, ſhall exceed fifty feet in breadth upon a medium, or
" the ſaid old road, ſo to be diverted or turned, ſhall lie through
" the open field or ground belonging to any particular perſon or
" perſons, ſuch perſon or perſons, and alſo the perſon or perſons
" intitled to the land between the fences on the ſide of ſuch
" highway, ſhall reſpectively hold and enjoy the land and ſoil
" of ſuch old highway, and pay to the ſurveyor, for the uſe of
" the highways, ſo much money as ſhall be agreed upon between
" the parties; or if they cannot agree, ſo much as ſhall be
" deemed and adjudged by the ſaid juſtices, or jury, if ſuch
" jury ſhall be impanelled as aforeſaid, to be adequate to the
" purchaſe of it, eſtimating ſuch highway at thirty feet in
" breadth, upon an average.

Where old footways are ſtopped up, and new ones laid out, in what manner the owners of the lands ſhall make and receive ſatisfaction.

† *Sect.* 33. And it is further enacted, par. 21, " That
" where any footway ſhall be diverted by virtue of this act
" through the land belonging to the ſame perſon who owned the
" land through which ſuch old footway lay, the ſame ſhall be
" adjudged and deemed an exchange only, and no ſatisfaction or
" compenſation ſhall be made, unleſs the land to be uſed for
" ſuch new footway ſhall be of greater length, and of greater
" value, than the land uſed for ſuch old footway; and where the
" ſaid footway ſhall not be turned through the lands belonging
" to the ſame perſon, the damage occaſioned by ſuch old foot-
" way to the lands through which it lay, if the parties intereſt-
" ed ſhall not agree in adjuſting the ſame, ſhall be adjudg-
" ed by two indifferent perſons, the one to be named by the
" owner of the land, and the other by the ſaid two juſtices;
" and if the perſons ſo to be nominated cannot agree therein
" they ſhall chuſe ſome third perſon to adjudge the ſame, whoſe
" determination ſhall be final; and the money at which ſuch
" damages ſhall be aſſeſſed ſhall be applied in making ſatis-
" faction

" ſuction to the owner or owners of the land through which " ſuch new footway ſhall be made.

7 Sect. 34. par. 22. And it is further enacted by the ſaid ſtatute, " That if in any pariſh, townſhip, or place, where " any highway ſhall be diverted and turned by virtue of this act, " it ſhall appear to the juſtices, who are hereby authoriſed to " view or inquire into the ſame, that there are other highways " within ſuch pariſh, townſhip, or place, beſides that ſo to be " diverted and turned, which may, without inconvenience to " the publick, be diverted into ſuch new highway hereby au- " thoriſed to be made, or into any other highway or highways " within ſuch pariſh, townſhip or place, and the charge of re- " pairing ſuch highway or highways may be thereby ſaved to " ſuch pariſh, townſhip, or place; it ſhall and may be lawful " for ſuch juſtices to order ſuch highway or highways, which " ſhall appear to them unneceſſary, to be ſtopped up, and the " ſoil thereof ſold, in ſuch manner, and ſubject to ſuch reſtric- " tions, and ſuch right of appeal to the party or parties aggriev- " ed thereby, as are herein-before reſpectively directed and giv- " en concerning the highways to be ſtopped up or inclofed."

Juſtices to order unneceſſary highways to be ſtopped up.

7 Sect. 35. As to the fourth general Head of this Chapter, viz. In what manner the ſurveyors of the highways ſhall be appointed, it is enacted by the 13 Geo. 3. c. 78. ſ. 1. " That up- " on the twenty-ſecond day of September, in every year, unleſs " that day ſhall be Sunday, and then on the day following, the " conſtables, headboroughs, tythingmen, churchwardens, ſur- " veyor of the highways, and houſeholders, being aſſeſſed to any " parochial or public rate of every pariſh, townſhip, or place, " ſhall aſſemble together at the church or chapel, or if there " ſhall be no church or chapel, then at the uſual place of publick " meetings for ſuch pariſh, townſhip, or place, at the hour of " eleven in the forenoon; and the major part of them, ſo aſ- " ſembled, ſhall make a liſt of the names of at leaſt ten perſons " living within ſuch reſpective pariſhes, townſhips, or places, " who, each of them have an eſtate in lands, tenements, or he- " reditaments, lying within ſuch reſpective pariſh, townſhip or " place, in their own right, or in the right of their wives, of the " value of ten pounds by the year; or a perſonal eſtate of the va- " lue of one hundred pounds, or are occupiers or tenants of houſ- " es, lands, tenements, or hereditaments, of the yearly value " of thirty pounds: and if there ſhall not be ten perſons hav- " ing ſuch qualifications as aforeſaid, then they ſhall inſert in " ſuch liſt the names of ſo many of ſuch perſons as are ſo quali- " fied, as above required, together with the names of ſo many of " the

On the 22d Sept. yearly a liſt of ten perſons to be made, &c.

" the moſt ſufficient and able inhabitants of ſuch pariſh, tow
" ſhip, or place, not ſo qualified, as ſhall make up the numb
" ten, if ſo many can be found; if not, ſo many as ſhall
" there reſident, to ſerve the office of ſurveyor of the highway
" and the conſtable, headborough, or tythingman, of ſuch pari
" townſhip, or place, ſhall, within three days after ſuch mee
" ing, tranſmit a duplicate of ſuch liſt to one of the juſtices
" the peace within the limit of the county, riding diviſion, ho
" dred, city, corporation, precinct, or liberty, where ſuch p
" riſh, townſhip, or place, ſhall lie, living in or near the ſam
" and ſhall alſo return and deliver the original liſt, made a
" agreed upon at ſuch meeting, to the juſtices of the peace,
" their ſpecial ſeſſions to be held for the highways within th
" limit, in the week next after the Michaelmas general quar
" ſeſſions of the peace in every year; and ſhall alſo, within thr
" days after making the ſaid liſt, give perſonal notices to,
" cauſe notices in writing to be left at the places of abode of, th
" ſeveral perſons contained in ſuch liſt, informing them of the
" being ſo named, to the intent that they may ſeverally appe
" before the juſtices at the ſaid ſpecial ſeſſions, to accept ſuch o
" fice, if they ſhall be appointed thereto, or to ſhew cauſe,
" they have any, againſt their being appointed: and the ſaid ju
" tices are hereby authoriſed and required to hold ſuch ſpeci
" ſeſſions at ſuch convenient place or places, within their re
" pective limits, as they, in their diſcretion, ſhall judge proper,
" and to give notice of the time and place where they intend t
" hold the ſame, to the conſtables, headboroughs, or tything
" men, of every ſuch pariſh, townſhip, or place, at leaſt te
" days before the holding of the ſaid ſeſſion; and the ſaid juſ
" tices, then and there, from the ſaid liſts, according to their
" diſcretion, and the largeneſs of the pariſh, townſhip, or place
" reſpectively, by warrant under their hands and ſeals, ſhall ap
" point (15) one, two, or more, of ſuch perſons as aforeſaid, i
" he or they ſhall, in the opinion of ſuch juſtices, be qualified for
" the office of ſurveyor; if not, one, two, or more of the other
" ſubſtantial inhabitants or occupiers of lands, tenements, woods,
" tithes, or hereditaments, within ſuch pariſh, townſhip, or place,
" living within three miles thereof, and within the ſame county,
" fit and proper to ſerve the office of ſurveyor of the highways for
" ſuch pariſh, townſhip, or place, if any ſuch can be found; which
" appointment ſhall, by the conſtables, headboroughs, or tything-
" men

Qualifications of ſurveyors. A duplicate of ſuch liſt ſhall be tranſmitted to one of the juſtices, and the original liſt to the ſpecial ſeſſions, &c.

Notices to the perſons contained in the liſt.

The juſtices are to give 10 days notice of holding ſpecial ſeſſions to the conſtables, &c. and may appoint qualified ſurveyors from the liſt, or other inhabitants, &c.

(15) The court will not compel the juſtices to appoint a ſurveyor out of the liſt returned to them by the pariſh, if ſuch liſt has been procured by indirect and fraudulent means, at a riotous aſſembly of the lower ſort of people, but they ſeemed to incline very ſtrongly that it was not abſolutely neceſſary that the conſtable, headborough, tythingman, &c. as mentioned in the act, ſhould be preſent, but that the legiſlature only meant it to be a full parochial meeting, without intending that each of theſe bodies ſhould be ſuch eſſential conſtituent parts of it, that the acts of the meeting would be annulled and made void by the abſence of thoſe officers. 4 Burr. 2454.

men aforesaid be notified to every person so appointed by the said justices, within three days after such appointment, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house, or usual place of abode; and every person so appointed, if he accepts the said office, shall be surveyor of the highways for the said parish, township, or place, for the year ensuing, and shall take upon him, and duly execute the office aforesaid; and the said justices shall then and there give such of the said surveyors as shall personally appear before them a charge, for the better performance of their duty, according to the directions of this act: and if any of the said persons, so appointed, whose names were contained in such list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions, and accept the said office, if appointed thereto, in manner aforesaid, or shall not, within six days after being served with such warrant of appointment, signify his acceptance thereof, either in person or by writing, to one of the said justices, he shall forfeit five pounds; and in case any person so appointed by the said justices, whose name was not contained in such list, shall refuse or neglect to accept the said office, or shall not, within six days after being served with such appointment, shew to one of the justices signing such appointment sufficient cause why he should not serve such office, he shall forfeit fifty shillings: provided that no person who hath been appointed and served the office of surveyor for one year, shall be liable to be appointed surveyor for the same parish, township, or place, within three years from the time of such first appointment and service, unless he shall consent thereto; but if no such list shall be made and returned, or if the said justices shall make such appointment as aforesaid, and the person or persons so appointed shall refuse to serve the said office, the said justices, or any two of them, shall and may, and are hereby required, at the said special sessions, or at some subsequent special sessions, to be held within one month after, to nominate and appoint some other person or persons to be surveyor of such parish township, or place, whom they shall judge proper to execute that office, and shall and may fix such salary to be paid to such surveyor, to be appointed as herein last before mentioned, out of the said forfeiture, and all other forfeitures, fines, penalties, assessments, and compositions, to be paid, levied, and raised, under the authority of this act, within such parish, township, or place respectively, as such justices shall think fit, not exceeding one eighth part of what shall have been raised by an assessment of sixpence in the pound, for the use of the highways within such parish, township, or place, where any such assessment shall

Which appointment shall be notified by the constables.

And the surveyor hold his office for a year.

Penalty on refusing to serve.

No person who hath served one year, to serve again within 3 years for same place, without his consent.

If no such list be made, or the person appointed refuses to serve, another person may be appointed at a subsequent special session and a salary fixed.

" have

" have been raiſed, and obſerving the ſame reſtriction, as n
" as they can, from the beſt information they ſhall be able
" get of the probable amount of ſuch an aſſeſſment, where no
" hath been already made; and the ſaid juſtices ſhall and m
" if they think fit, require the conſtables, headboroughs, tythi
" men, and ſurveyor, of every ſuch pariſh, townſhip,
" place, or any of them, to return to them, at ſuch time
" place as they ſhall appoint, an account, in writing, of the
" which ſuch aſſeſſment of ſix-pence in the pound hath raiſed,
" will, in his or their opinion, raiſe within ſuch pariſh, tow
" ſhip or place: and if the conſtables, headboroughs, tythi
" men, churchwardens, ſurveyors of the highway, and
" houſeholders as aforeſaid, of any pariſh, townſhip or pla
" ſhall neglect or refuſe to make ſuch liſt as aforeſaid; or if
" conſtable, headborough or tythingman, of any pariſh, tow
" ſhip, or place, ſhall not return the ſaid liſt of names, w
" made, and ſuch duplicate thereof as aforeſaid, and give
" notice or notices, and ſerve ſuch warrant or warrants as in
" act is directed; or if the ſaid conſtable, headborough, tythi
" man, and ſurveyor, or any of them, ſhall neglect to re
" ſuch account of the amount of ſuch aſſeſſment as aforeſai
" when ſo required as aforeſaid, every conſtable, headboro
" tythingman, churchwarden, or ſurveyor, ſo neglecting or
" fuſing, in any of the ſaid caſes, ſhall, for every ſuch defa
" reſpectively, forfeit the ſum of forty ſhillings.

Aſſeſſments to be returned in writing.

Penalty on conſtables.

† And it is further enacted by the ſaid ſtatute, par. 2. "T
" in all caſes where the ſaid juſtices, upon neglect, or refuſal
" the perſon ſo nominated ſurveyor as aforeſaid to accept the
" office, ſhall appoint any other perſon for ſuch ſurveyor, wi
" ſalary as aforeſaid, the ſaid juſtices ſhall, and are hereby
" quired to appoint one ſubſtantial inhabitant of ſuch pari
" townſhip, or place, for aſſiſtant to ſuch ſurveyor, in the ſeve
" matters, and for the ſeveral purpoſes hereafter mentioned,
" til the next annual appointment of ſurveyors, according to
" directions of this act; and if the perſon ſo appointed aſſiſt
" ſhall, upon notice of ſuch appointment, refuſe to accept
" office, he ſhall forfeit the ſum of fifty ſhillings: and, in
" caſe, it ſhall and may be lawful for ſuch juſtices to appo
" any other ſubſtantial inhabitants of ſuch pariſh, townſhip,
" place, for aſſiſtant to ſuch ſurveyor, in manner and for
" time aforeſaid; and if ſuch ſecond appointed aſſiſtant ſhall
" cline or refuſe to accept the ſaid office, he ſhall, in like man
" forfeit the ſum of fifty ſhillings; and the ſaid juſtices ſh
" and may appoint any other perſon, inhabiting in ſuch par
" tow

How the aſſiſtant ſurveyor is to be appointed, penalty for refuſing to ſerve, and the appointment of another in his ſtead.

townſhip, or place, aſſiſtant to ſuch ſurveyor, who ſhall be intitled to the ſaid forfeitures herein laſt before mentioned, and alſo to ſome further allowance by way of ſalary, (to be paid as the ſurveyor's ſalary is hereby directed to be paid, if the ſaid juſtices ſhall think any ſuch ſalary neceſſary, and ſhall order the ſame, which they are hereby authoriſed to do: provided, that no perſon ſo appointed aſſiſtant for one year ſhall be liable to be appointed aſſiſtant for the ſame pariſh, townſhip, or place, within three years next following ſuch firſt appointment, without his conſent.

The ſurveyor to give bond for the money he ſhall receive.

† And further, by par. 3. "That the ſurveyor of every pariſh, townſhip, and place, who ſhall not reſide therein, but ſhall be appointed with ſuch ſalary as aforeſaid, ſhall, if required by the churchwarden, overſeer of the poor, or any principal inhabitant of the pariſh, townſhip, or place, for which he ſhall be ſo appointed ſurveyor, at the time of his appointment, or within fourteen days after give a bond upon paper, without ſtamp thereupon, to ſome proper perſon within ſuch pariſh, townſhip, or place, to be nominated by the ſaid juſtices, with ſufficient ſurety, to account for the money which ſhall come to his hands as ſurveyor, according to the directions of this act; which bond ſhall be good and effectual in law.

How the juſtices ſhall appoint the ſurveyor elected by the inhabitants.

† *Sect.* 36. And it is further enacted by the ſaid ſtatute, par. 5. That if two parts out of three of thoſe ſo to be aſſembled in any ſuch pariſh, townſhip, or place, for the nomination of ſurveyors, ſhall agree in the choice of any particular perſon of ſkill and experience, to ſerve the ſaid office, and in the ſettling of a certain ſalary for his trouble therein, and ſhall return the name of ſuch perſon, together with the liſt herein-before directed, to the ſeſſions, to be held in the week next after the Michaelmas quarter ſeſſions; the ſaid juſtices, if they ſhall think proper, may appoint ſuch perſon to be ſurveyor for ſuch pariſh, townſhip, or place, and allow him the ſalary mentioned in ſuch agreement, which ſhall be raiſed and paid in the ſame manner as the ſalary herein-before mentioned is directed to be raiſed and paid; and in caſe any ſurveyor to be appointed under the authority of this act ſhall die, or become incapable of executing that office, before ſuch next ſpecial ſeſſions for appointing ſurveyors, the ſaid juſtices, or any two of them, ſhall and may, at ſome ſpecial ſeſſions nominate and appoint ſuch perſon or perſons as they ſhall think proper, to execute the ſaid office, until ſuch next ſpecial ſeſſions for appointing ſurveyors, as aforeſaid; and, if ſuch deceaſed ſurveyor had a ſalary, they may allow the ſame ſalary to his ſucceſſor, in proportion to the time he ſhall

"ſerve

" ſerve the ſaid office; and if the ſaid juſtices of the peace,
" their ſaid ſpecial ſeſſions, or at any time afterwards, purſu
" to the powers of this act, ſhall appoint more than one per
" for ſurveyor of any pariſh, townſhip, or place, all and ev
" perſon or perſons ſo appointed, ſhall be comprehended un
" the word *Surveyor* in every part of this act.

Juſtices of cities, &c. only to allow ſuch ſalaries as ſhall be fixed by inhabitants.

† Provided, by par. 55. " That nothing in this act conta
" ed ſhall authoriſe or impower, or be deemed, conſtrued,
" taken to authoriſe and impower, any juſtice or juſtices of
" peace, for any city, town corporate, or borough, to fix or
" low any ſalary to or for any ſurveyor to be appointed by
" ſuch juſtice or juſtices, other than and except ſuch ſalary
" ſhall be ſettled and agreed upon by two parts out of three
" the perſons aſſembled in the pariſh, townſhip, or place, wi
" ſuch city, town corporate, or borough, for which ſuch ſurve
" ſhall be appointed, purſuant to the directions of this act.

† *Sect.* 37. As to the fifth general Head of this Chapter, o
In what manner the ſurveyors of the highways ought to exec
their office, it is enacted by the ſame ſtatute of 13 Geo. 3. c.
ſ. 4. " That the aſſiſtant, ſo to be nominated and appoint
" (16) ſhall aſſiſt the ſaid ſurveyor, whenever requeſted by h
" in calling in and attending the performance of the ſtatu
" duty; in collecting the compoſitions, fines, penalties, and f
" feitures; in making and collecting the aſſeſſment; in mak
" out and ſerving the notices authoriſed by this act; and in ſ
" other matters and things as ſhall be reaſonably required of h
" by the ſurveyor, in the execution of his office as ſurveyor, p
" ſuant to this act: and the ſaid aſſiſtant ſhall account with,
" pay to, the ſurveyor, or to his order, all the money wh
" ſhall come to his hands as aſſiſtant, by the means as aforeſa
" and, in default thereof, he ſhall forfeit double the value
" the money by him ſo received, and not ſo paid and accoun
" for; and if the ſaid aſſiſtant ſhall wilfully neglect or make
" fault in the performance of any of the duty required fr
" him by this act, he ſhall forfeit not exceeding five pounds,
" leſs than forty ſhillings, at the diſcretion of the juſtice or j
" tices of the limit within which ſuch aſſiſtant ſhall be appoi
" ed: and the ſaid ſurveyor ſhall ſend orders, in writing, u
" the ſaid aſſiſtant, for the payment of all ſums due to any per
" or perſons, for work or materials, which amount to forty ſh
" lings, or upwards; and the ſaid ſurveyor ſhall not be reſp
" ſible for any ſum or ſums of money which ſhall be received
" the ſaid aſſiſtant, and ſhall not be actually paid to ſuch ſ
" veyor, or to his order as aforeſaid.

(16) Vide Sup. p. 392.

Duty of the aſſiſtant ſurveyor.

4 Sect. 38. And alſo, it is further enacted by the ſaid ſtatute, c. 12. "That the ſurveyors ſhall, as they ſhall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, cauſeways, and pavements, within the pariſh, townſhip, or place, for which they ſhall be appointed ſurveyors; and in caſe they ſhall obſerve any nuiſances, encroachments, obſtructions, or annoyances, made, committed, or permitted, in, upon, or to the prejudice of them, or any of them, contrary to the directions of this act, they ſhall give, or cauſe to be given, to any perſon or perſons doing, committing, or permitting the ſame, perſonal notice, or notice in writing, to be left at his, her, or their uſual place or places of abode, ſpecifying the particulars wherein ſuch nuiſances, defaults, obſtructions, or annoyances, conſiſt; and if ſuch nuiſances, obſtructions, or annoyances ſhall not be removed, and the ditches, drains, gutters, and water courſes aforeſaid effectually made, ſcoured, cleanſed, and opened, and ſuch trunks, tunnels, plats, and bridges, made and laid, and ſuch hedges properly cut and pruned, within twenty days after ſuch notice of the ſame reſpectively given as aforeſaid, then the ſaid ſurveyors ſhall remove ſuch nuiſances, obſtructions, or annoyances, and open, cleanſe, and ſcour ditches, gutters, and water courſes, and make or amend ſuch trunks, tunnels, plats, or bridges, and cut and prune ſuch hedges, for the benefit and improvement of the ſaid highways; and the perſon or perſons ſo neglecting to make or open and cleanſe ſuch ditches, gutters, or water courſes, or to cut or prune ſuch hedges, during the time aforeſaid, after ſuch notice given, ſhall forfeit, for every foot in length, which ſhall be ſo neglected, the ſum of one penny, and the ſaid ſurveyors ſhall be reimburſed what charges and expences they ſhall be at in removing ſuch nuiſances, obſtructions, or annoyances, and making or opening, cleanſing and ſcouring, ſuch ditches, gutters, and water courſes, and in making or amending ſuch trunks, tunnels, plats, or bridges, and in cutting and pruning ſuch hedges reſpectively, by the perſon or perſons who ought to have done the ſame, over and above the ſaid forfeiture; and in caſe ſuch perſon or perſons ſhall, upon demand, refuſe or neglect to pay the ſaid ſurveyor his charges and expences occaſioned thereby reſpectively, and alſo the ſaid forfeiture of one penny *per* foot, then the ſaid ſurveyor ſhall apply to any juſtice of the peace, and, upon making oath before him of notice being given to the defaulter in manner aforeſaid, and of the ſaid work being done by ſuch ſurveyor, and of the expences attending the ſame, the ſaid ſurveyor ſhall be repaid by ſuch perſon or perſons all ſuch his ſaid charges as ſhall be allowed to be reaſonable by the ſaid juſtice; or, in default of payment thereof on "demand,

Surveyors duty in view of highways, in reſpect to nuiſances, &c.

Vide Salk. 357. Where it was adjudged on the 22 Car. 2. c. 12. par. 12. that the juſtices ought to fix the particular days, and not generally appoint the time between ſuch a day and ſuch a day.

" demand, the ſame ſhall be levied in ſuch manner as the per
" ties and forfeitures hereby inflicted are directed to be levied

How highways be tenure, &c. may be ordered to be repaired.

† *Sect.* 39. And it is further enacted by the ſaid ſtat
par. 23. " That every ſurveyor ſhall give information upon
" to the ſaid juſtices, or any two or more of them, of all
" highways, and of all bridges, cauſeways, or pavements, u
" ſuch highways, as are out of repair, and ought to be repa
" by any perſon or perſons, bodies politick or corporate, by
" ſon of any grant, tenure, limitation, or appointment, of
" charitable gift, or otherwiſe howſoever; and the ſaid juſt
" ſhall limit a time for repairing the ſame, of which no
" ſhall be given by the ſaid ſurveyor to the occupier or occup
" of the lands or tenements liable to the burthen of ſuch repa
" or to ſuch other perſon or perſons, bodies politick or corpora
" as are chargeable with the ſame; and if ſuch repairs ſh
" not be effectually made within the time ſo limited, the ſ
" juſtices ſhall, and are hereby required to preſent ſuch hi
" ways, bridges, cauſeways, or pavements ſo out of repair,
" gether with the perſon or perſons, bodies politick or corpora
" liable to repair the ſame, at the next general quarter ſeſſions
" the peace for the limit wherein ſuch highway ſhall lie; a
" the juſtices at ſuch quarter ſeſſions may, if they ſee juſt ca
" direct the proſecution to be carried on at the general expe
" of ſuch limit, and to be paid out of the general rates within
" ſame.

Vide 1 Black. 602.

Juſtices may order which highways ſhall be firſt repaired.

† And it is further enacted by the ſaid ſtatute, par.
" That the ſaid juſtices, at any ſpecial ſeſſions to be held by v
" tue of this act, may, by writing under their hands and ſe
" order and appoint thoſe highways (not being turnpike roa
" which in their opinion do moſt want repair within their ju
" diction, to be firſt amended, and at what time, and in what m
" ner, the ſame ſhall be amended; according to which order,
" ſuch there be, all and ſingular the reſpective ſurveyors of
" ſaid highways are hereby required to proceed within their
" ſpective liberties.

Direction poſts where and how to be erected.

† And, for the better convenience of travellers where ſeve
highways meet, it is further enacted in par. 26. " That
" ſaid juſtices, at ſome ſpecial ſeſſions to be held for the pu
" poſes of this act, ſhall iſſue their precept to the ſurveyor
" the highways for any pariſh, townſhip, or place, where
" veral highways meet, and there is no proper or ſufficient
" rection poſt, or ſtone, already fixed or erected, requiring h
" forthwith to cauſe to be erected or fixed, in the moſt conv
" nie

ient place where ſuch ways meet, a ſtone or poſt, with in-
criptions thereon, in large legible letters, painted on each
de thereof, containing the name or names of the next market
wn or towns, or other conſiderable place or places, to
hich the ſaid highways reſpectively lead; and alſo at the
veral approaches or entrances to ſuch parts of any high-
ays as are ſubject to deep or dangerous floods, graduated
ones or poſts, denoting the depth of water in the deepeſt
rt of the ſame, and likewiſe ſuch direction poſts, or ſtones,
s the ſaid juſtices ſhall judge to be neceſſary, for the guiding
travellers in the beſt and ſafeſt tract through the ſaid floods
waters; and the ſaid ſurveyor ſhall be reimburſed the ex-
nces of providing and erecting the ſame reſpectively out
the monies which ſhall be received by him or them, pur-
ant to the directions of this act; and in caſe any ſurveyor
all, by the ſpace of three months after ſuch precept to him
irected and delivered; neglect or refuſe to cauſe ſuch ſtones
poſts to be fixed, as aforeſaid, every ſuch offender ſhall
rfeit the ſum of twenty ſhillings."

Materials where and in what manner to be taken.

Sect. 40. And, for the better repairing, and keeping in
ir, the ſaid highways, and providing of materials for that
poſe, it is enacted, by par. 27. "That it ſhall and may be
wful to and for every ſurveyor, to be appointed as aforeſaid,
take and carry away, or cauſe to be taken and carried away,
much of the rubbiſh or refuſe ſtones of any quarry or quar-
ies, lying and being within the pariſh, townſhip or place,
here he ſhall be ſurveyor, (except ſuch as ſhall have been
ot by the ſurveyor of any turnpike road), without the licence
the owner or owners of ſuch quarries, as they ſhall judge
eceſſary for the amendment of the ſaid highways, but not to
g or get ſtone in ſuch quarry without leave of the owner
hereof; and alſo that it ſhall and may be lawful for every
uch ſurveyor, for the uſe aforeſaid, in any waſte land or com-
non ground, river or brook, within the pariſh, townſhip, or
lace, for which he ſhall be ſurveyor, or within any other pa-
iſh, townſhip, or place, wherein gravel, ſand, chalk, ſtone,
r other materials, are reſpectively likely to be found, (in caſe
ufficient cannot be conveniently had within the pariſh, town-
hip, or place, where the ſame are to be employed, and ſuf-
icient ſhall be left for the uſe of the roads in ſuch other pa-
iſh, townſhip, or place), to ſearch for, dig, get, and carry,
way the ſame, ſo that the ſaid ſurveyor doth not thereby di-
ert or interrupt the courſe of ſuch river or brook or pre-
udice or damage any building, highway, or ford, nor dig or
get the ſame out of any river or brook within the diſtance of
one hundred feet above or below any bridge, nor within
the like diſtance of any dam or wear; and likewiſe to gather
ſtones lying upon any lands or grounds within the pariſh,

" townſhip,

" townſhip, or place, where ſuch highway ſhall be, for
" ſervice and purpoſe, and to take and carry away ſo muc
" the ſaid materials as by the diſcretion of the ſaid ſurv
" ſhall be thought neceſſary to be employed in the amend
" of the ſaid highways, without making any ſatisfaction for
" ſaid materials; but ſatisfaction ſhall be made for all dam
" done to the lands or grounds of any perſon or perſons
" carrying away the ſame, in the manner herein after di
" ed, for getting and carrying materials in incloſed l
" or grounds; but no ſuch ſtones ſhall be gathered witho
" conſent of the occupier of ſuch lands or grounds, or a lic
" from a juſtice of peace for that purpoſe, after having
" moned ſuch occupier to come before him, and heard his
" ſons, if he ſhall appear and give any, for refuſing his
" ſent."

Without making ſatisfaction.

But ſatisfaction to be made for damages done in taking them away.

† Provided, by par. 28. " That nothing in this act cont
" ed, relative to the gathering or getting of ſtones, ſhall
" tend to any quantity of land, (being private property,) co
" ed with ſtones thrown up by the ſea, commonly ca
" *beach*."

Not to extend to ſtones thrown up by the ſea, called Beach.

† *Sect.* 41. And it is further enacted by the ſaid ſtatute, 29. " That every ſuch ſurveyor, for the uſe aforeſaid, ſ
" ſearch for, dig, and get ſand, gravel, chalk, ſtone or o
" materials, if ſufficient cannot conveniently be had within
" waſte lands, common grounds, rivers, or brooks, in
" through any of the ſeveral or incloſed lands or ground
" any perſon or perſons whomſoever, within the pariſh, to
" ſhip, or place, where the ſame ſhall be wanted, or by
" cence from two juſtices of the peace, at a ſpecial ſeſſi
" within any other pariſh, townſhip, or place, adjoining or
" ing near to the highway for which ſuch materials ſhall be
" quired, if it ſhall appear to ſuch juſtices that ſufficient
" terials cannot be conveniently had in the pariſh, townſhip
" place, where ſuch highways lie, or in the waſte lands
" common grounds, rivers or brooks, of ſuch adjacent par
" townſhip or place, and that a ſufficient quantity of ma
" rials will be left for the uſe of the pariſh, townſhip, or pl
" where the ſame ſhall be, (ſuch lands or grounds not be
" a garden, yard, avenue to a houſe, lawn, park, paddock,
" incloſed plantation), and to take and carry away ſo much
" the ſaid materials as by the diſcretion of the ſaid ſurve
" ſhall be thought neceſſary to be employed in the amendm
" of the ſaid highways; the ſaid ſurveyor making ſuch ſatisf
" tion for the damage to be done to ſuch lands or grounds
" the getting and carrying away the ſame, as ſhall be agr
" upon between him and the owner, occupier, or other per
" intereſted in ſuch lands or ground reſpectively, in the p
" ſen

If ſufficient materials cannot be found in waſte lands, &c. the ſurveyor may take them from ſeveral or incloſed lands or grounds.

Making ſatisfaction to the owners.

fence, and with the approbation of two or more ſubſtantial inhabitants of ſuch pariſh, townſhip, or place; and in caſe they cannot agree, then ſuch ſatisfaction and recompence ſhall be ſettled and aſcertained by order of one or more juſtice or juſtices of the peace of the limit where ſuch land or ground ſhall lie: and in ſuch places, where from from the want of other materials, burnt clay may be ſubſtituted in the place thereof, it ſhall and may be lawful for the ſurveyor to dig clay in ſuch places as he is hereby authoriſed to dig chalk or gravel, and to dry the ſame upon the lands adjoining, and to burn the ſame upon any waſte lands or common grounds, and to carry ſuch clay in ſuch manner as other materials are allowed to be carried by this act, upon making ſuch ſatisfaction for the damages within the ſeveral incloſed lands or grounds where ſuch clay ſhall be placed or carried, as herein directed with regard to other materials: provided, that when the owner of any ſuch incloſed lands ſhall have occaſion for any ſuch materials lying within the ſame for the repair of any highway, or other roads or ways upon his eſtate, or which he ſhall be under obligation to repair, and ſhall give notice to ſuch ſurveyor that he apprehends there will not be ſufficient for thoſe purpoſes, and alſo for the uſe of the public highways; then, and in every ſuch caſe, the ſurveyor ſhall not be permitted to dig or take ſuch materials without the conſent of ſuch owner, or an order of two juſtices of the peace, after having ſummoned and heard the ſaid owner or occupier, or his ſteward or agent; which juſtices are hereby authoriſed to enquire into the nature and circumſtances of the caſe, and to permit or reſtrain ſuch power, in ſuch manner, and under ſuch directions, as to them ſhall ſeem juſt." [17]

In what manner ſatisfaction is to be ſettled.

Clay may be got and burnt into materials for repairing the highways.

(17) In an order for this purpoſe, it is not neceſſary that the name of the ſurveyor ſhould be mentioned, nor that any certain number of days notice ſhould appear to have been given to the occupier of the lands. Which notice, it is ſufficient to ſtate, was *left at the place of abode*. And notice to the occupier, and not to the owner, is enough. But it neceſſary expreſsly to alledge, that materials, &c. were not to be found; and alſo, that materials cannot be found in the waſtes, and what may be found in the private ſoil; for they cannot dig and try for it in the private ſoil; nor can they dig all over the eſtate for all materials, and the ſatisfaction ought to be awarded to the owner or occupier, or both, according to the caſe. 1 *Burr.* 382.

† *Sect.* 42. Alſo, it is enacted, par. 31. "That if any ſurveyor, or perſon employed by him, ſhall, by reaſon of the ſearching for, digging, or getting any gravel, ſand, ſtones, chalk, clay, or other materials for repairing any highways, make or cauſe to be made, any pit or hole in any ſuch lands or grounds, rivers or brooks, as aforeſaid, wherein ſuch materials ſhall be found, ſuch ſurveyor, perſon or perſons, ſhall forthwith cauſe the ſame to be ſufficiently fenced off, and ſuch fence ſupported and repaired, during ſuch time as the ſaid pit or hole ſhall continue open, and ſhall, within three

If pits or holes are made in getting materials, the ſurveyor ſhall cauſe them to be filled up or fenced off.

" days after ſuch pit or hole ſhall be opened or made, whe
" no gravel, ſtones, or materials, ſhall be found, cauſe t
" ſame to be forthwith filled up, levelled, and covered wi
" the turf or clod which was dug out of the ſame; and whe
" any ſuch materials ſhall be found, within fourteen days
" ter having dug up ſufficient materials in ſuch pit or ho
" cauſe the ſame to be filled up, ſloped down, or fenced
" and ſo continued; and every ſurveyor ſhall, within twen
" days after he ſhall be appointed to that office, cauſe all
" ſaid pits and holes which ſhall then be open, and not like
" to be further uſeful, to be filled up or ſloped down, in ma
" ner aforeſaid; and if they are likely to be further uſeful,
" ſhall ſecure the ſame by poſts and rails, or other fences,
" prevent accidents to perſons or cattle: and in caſe ſuch ſu
" veyor, perſon or perſons, ſhall neglect to fill up, ſlope dow
" or fence off, ſuch pit or hole, in manner and and within t
" time aforeſaid; he or they ſhall forfeit the ſum of ten ſhillin
" for every ſuch default: and in caſe ſuch ſurveyor, perſ
" or perſons, ſhall neglect to fence off ſuch pit or hole, or
" ſlope down the ſame, as herein before directed, for the ſpa
" of ſix days after he or they ſhall have received notice for eith
" of thoſe purpoſes from any juſtice of the peace, or fro
" the owner or occupier of ſuch ſeveral ground, river,
" brook, or any perſon having right of common within ſuc
" common or waſte lands, as aforeſaid, and ſuch neglect an
" notice ſhall be proved upon oath before one or more of th
" ſaid juſtices of the peace, ſuch ſurveyor, perſon or perſons
" ſhall forfeit and pay any ſum not exceeding ten pounds, no
" leſs than forty ſhillings, for every ſuch neglect; to be de
" termined and adjudged by ſuch juſtice or juſtices, and to b
" laid out and applied in the fencing off, filling up, or ſlopin
" down, ſuch pit or hole, and toward the repair of the roa
" in the pariſh, townſhip, or place, where the offence ſha
" be committed, in ſuch manner as the ſaid juſtice or juſtice
" ſhall direct and appoint; which forfeiture, in caſe the ſam
" be not forthwith paid, ſhall be levied as other forfeitures ar
" herein after directed to be levied."

Or forfeit 10s. for every neglect.

And for every neglect after notice.

A ſum not exceeding 10l. nor leſs than 40s.

† Provided by par. 32. " That no ſtone, gravel, or materials
" to be dug for the uſe of any other pariſh, townſhip, or place
" than that wherein the ſame are found, ſhall be removed o
" carried from the place where they ſhall be ſo dug at an
" other time than between the firſt day of April and the firſt
" day of November, or in the time of hard froſt in the winte
" ſeaſon."

How materials for another pariſh ſhall be removed.

† *Sect.* 43. And it is further enacted, by par. 33. " That
" any perſon ſhall dig, or cauſe to be dug, materials for the
" highways, contrary to the direction of this act, whereby
" any

Damaging mills, &c.

any bridge, mill, building, dam, highway, ford, mines, or tin-works may be damaged or endangered; every offender therein shall forfeit, for every such offence, any sum not exceeding five pounds, nor less than twenty shillings, at the discretion of the court or justices, before whom complaint thereof shall be made."

The surveyor's duty is to keep books, and enter the accounts of all money paid and received.

"Sect. 44. Also it is enacted by the said statute, par. 48. That the surveyor shall collect the several assessments, forfeitures, penalties, sums of money, and compositions, to be received and taken by virtue of this act, within the year for which he is appointed surveyor, and shall keep one or more book or books, in which he shall fairly enter a just, true and fair account of all such money as shall have come to his hands, or to the hands of the said assistant, and to whom, and on what occasion, he shall have paid or applied the same; and shall also enter in such book or books a list or lists of all such sums of money as shall then remain due and owing from any person or persons, in respect of the payments, compositions, assessments, penalties, or forfeitures, to be collected, received, or taken, for and in respect of the said highways, by virtue of this act; and the said surveyor shall also enter an account of all tools, materials, implements, and other things provided, by order of the inhabitants, at a vestry, or other publick meeting, for the repair of the said highways, at the publick expence of such parish, township, or place; and shall produce such books, and the assessments made within that year unto the inhabitants to which they belong, at a vestry or other public meeting to be held for that purpose, within fifteen days before the said special sessions so to be held in the week next after Michaelmas quarter sessions, as aforesaid, to the intent that the said accounts, assessments, and lists may be inspected by the inhabitants; and every such surveyor shall, after the said books and assessments shall have been produced at such meeting, take the same to such justice of the peace for the limit wherein such parish, township, or place, doth lie, and on such day, and at such hour, as shall be agreed upon at such meeting, some day after the said meeting of the inhabitants, and before such last-mentioned special sessions, and then and there verify such account, or any part thereof, upon oath, if required; and such justice may allow such account, if he finds it just, or postpone it until such special sessions, if he finds cause for so doing, in which case it may be settled and allowed at such special sessions (18) after the parts objected

And also of all money remaining due.

Also of all tools, materials, &c. And shall produce his accounts at a vestry meeting.

And afterwards before a justice of peace, who may allow them.

Or they may be further examined and allowed, or disallowed, at the special sessions.

(18) The general quarter sessions have no original jurisdiction respecting the passing the surveyor's account, and paying over the ballances to the successor. Therefore, where an order for this purpose was made at the general quarter session, even by the consent of the special session it was quashed; for consent cannot give original jurisdiction to a court that has only an appellate jurisdiction. 2 Burr. 746.

" to by such justice shall have been explained and verified by
" proper evidence, to the satisfaction of the justices at such
" special sessions; and in case any articles contained in such
" accounts shall not be explained and proved to the satisfaction
" of such justices, they may disallow the same; and when-
" ever the said accounts shall be so settled and allowed, or
" disallowed, as aforesaid, all such books and assessments shall
" be transmitted to the churchwarden or overseer of the poor
" for such parish, township, or place, respectively, or, if the
" place be extraparochial, then to some principal inhabitant
" thereof, to be kept for the use of such parish, township, or
" place; and the said surveyor shall forthwith deliver a du-
" plicate of such book and account, together with all sums of
" money as shall remain in his hands, and likewise all tools,
" materials, implements, and other things, as aforesaid, to
" the succeeding surveyor for such parish, township, or place,
" in case any new surveyor shall be appointed, or retain the
" same in his hands, and account for them in his next ac-
" count, if he shall be continued surveyor for such parish,
" township, or place, in the succeeding year; and the suc-
" ceeding surveyor is hereby required to recover, collect, and
" receive, all such sums of money which shall be due and ow-
" ing as aforesaid, by all such ways and means, as fully and
" effectually, to all intents and purposes, as the preceding sur-
" veyor could, might, or ought to have recovered, collected,
" or received the same: and in case such surveyor shall ne-
" glect to provide such book or books, or to enter such re-
" spective accounts and lists therein, or to deliver the said
" book or books, and such duplicate thereof, and such assess-
" ments, tools, materials, implements, and other things, in
" manner aforesaid, he shall, for every such offence, forfeit
" not exceeding five pounds, nor less than forty shillings; and
" in case he shall make default in the paying or accounting
" for the money so remaining in his hands, within the time,
" and according to the directions aforesaid, he shall forfeit
" double the value of the money which shall be adjudged by
" the said justices to be in his hands; and in case any such
" surveyor shall die before such respective accounts and lists
" shall be made out, or such monies, books, assessments,
" tools, materials and implements, shall be so delivered and
" paid, the executors or administrators of such surveyor shall
" make out, pay, and deliver the same in like manner, and
" under the like penalty, as such surveyor is hereby required
" and made subject and liable to; and every surveyor shall
" pay to the justices clerks, for the appointment and charge,
" the sum of one shilling; for the bond sixpence; and for the
" account so to be examined and taken, and for the oath so
" to be administered, the sum of one shilling, and no more;
" and if any person or persons shall receive any greater sum

" or

Books, materials, tools, &c. to be delivered to the succeeding surveyor.

New surveyor authorised to collect the arrears, &c.

The surveyor liable to forfeitures for neglect of duty.

If surveyor dies, his executors, &c. shall account in the same manner.

Fees to be paid to the justices clerks.

or fee for the buſineſs aforeſaid than herein before mentioned, he ſhall forfeit the ſum of ten pounds for every offence."

† *Sect.* 45. And it is alſo enacted, by par. 50. "That where a ſufficient quantity of ſtone, gravel, chalk or other materials, cannot be provided and carried by the labourers and teams required by this act to perform ſtatute duty, the ſurveyor ſhall contract for the getting and carrying thereof, (in the preſence of the ſaid aſſiſtant, if any ſuch ſhall be appointed), at a meeting to be held for that purpoſe, of which ten days notice in writing ſhall be given, by fixing the ſame upon the door of the church or chapel of the parish, township, or place, or if there be no church or chapel, at the moſt public place there, which notice ſhall ſpecify the work to be done, and the time and place for letting thereof; and if any ſurveyor ſhall have any part, ſhare, or intereſt, directly or indirectly, in any ſuch contract, or in any other contract or bargain for work or materials to be made, done or provided, upon, for, or on account of any of the highways, roads, bridges, or other works whatſoever, under his care or management, or ſhall, upon his own account, directly or indirectly, let to hire any team, or ſell or diſpoſe of any timber, ſtone, or other materials, to be uſed or employed in making or repairing ſuch roads, bridges, or other works, as aforeſaid, (unleſs a licence, in writing, for the ſale of any ſuch materials, or to let to hire any ſuch team, be firſt obtained from ſome juſtice of the peace within that limit), he ſhall forfeit, for every ſuch offence, the ſum of ten pounds, and be for ever after incapable of being employed as a ſurveyor with a ſalary under the authority of this act."

How materials may be contracted for.

† 46. And it is further enacted, by par. 51. That if any "ſurveyor of the highways, after his acceptance of the ſaid "office, ſhall neglect his duty in any thing required of him by "this act, for which no particular penalty is impoſed, he ſhall "forfeit, for every ſuch offence, any ſum not exceeding five "pounds, nor leſs than ten ſhillings, at the diſcretion of the "juſtice or juſtices having juriſdiction therein."

Penalty upon the ſurveyor.

† And alſo by par. 54. "That the juſtices of the peace of "all cities, corporations, boroughs, and other places, are "hereby required to put in execution every part of this act "within their reſpective juriſdictions."

Juſtices of cities to put the act in execution.

† *Sect.* 47. And it is recited, by par. 44. of the ſaid ſtatute, That whereas, by ſeveral acts of parliament concerning turnpike roads, he ſhall pay it

Where the ſurveyor receives money due to the to the treaſurer.

pike roads (19), a certain part of the duty called ſtatute duty is or may be directed to be performed on ſuch roads, and it may happen in ſome places, that the ſeveral perſons liable thereto may have compounded for the ſame. It is therefore further enacted, "That in all ſuch caſes, the ſurveyor of "highways, where ſuch compoſition ſhall have been made, "ſhall pay to the treaſurer or ſurveyor of ſuch turnpike road "a certain part of the compoſition money ſo received, to be "proportioned according to the number of days duty which "ſuch perſon or perſons was or were liable to perform on "ſuch turnpike road; which money ſhall be laid out and ex-"pended on ſuch part of the ſaid turnpike road as lies within "the pariſh, townſhip, or place, from which it was received, "and not elſewhere; and if ſuch ſurveyor of the highways "ſhall refuſe or neglect to pay to the treaſurer or ſurveyor of "ſuch turnpike road ſuch part of the ſaid compoſition money "ſo received by him, within twenty days after he ſhall have "received the ſame, upon demand made by ſuch treaſurer or "ſurveyor, the ſame ſhall and may be levied on the goods and "chattels of ſuch ſurveyor, in ſuch manner as penalties and "forfeitures are by this act authoriſed to be levied."

(19) Vide the end of this chapter.

How the ſame ſhall be applied.

As to the ſixth general Head of this chapter, *viz.* What ſhall be ſaid to be a nuſance to the highway, I ſhall conſider: What ſhall be ſaid to be ſuch a nuſance at common law, and what by ſtatute.

Kitch. 34, 35.

Sect. 48. As to the firſt point, there is no doubt but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it leſs commodious to the king's people, are publick nuſances at common law.

2 R. Abr. 137, 265.

Sect. 49. Alſo it ſeemeth to be clear, That it is no excuſe for one who layeth ſuch logs in the highway that he laid them only here and there, ſo that the people might have a paſſage by windings and turnings through the logs: yet it is ſaid to be

2 R. Abr. 137.

no nuſance for the inhabitants of a town to unlade billets, *&c.* in the ſtreet before their houſes, by reaſon of the neceſſity of the caſe, unleſs they ſuffer them to continue there an unreaſonable time, after they are unloaded.

Sect. 50. There is no doubt but that it is a nuſance at common law to erect a new gate in a highway, as hath been more fully ſhewn in the precedent chapter. Alſo it ſeemeth clear, That it is a like nuſance to ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, or to

8 H. 7. 5.
Kitch. 34, 35.
8 H. 7. 5.

ſuffer the boughs of trees growing near the highway to hang over

the road, in such a manner as thereby to incommode the

Sect. 51. As to the second point, *viz.* What shall be said be a nusance to the highway by statute; not only all the ve mentioned nusances, which are such at common law, are emed also nusances by statute, but there is also one parti- ar nusance which is made such by statute, and doth not seem be taken notice of by common law, and that is the drawing a travelling carriage with more than six horses in length (a), permitting whereof hath occasioned the carrying off such ex- ive loads in such carriage, that the weight thereof hath in ny places rendered the roads unpassable.

(a) For the number now permitted to be drawn, vide infra, sect. 65.

As to the seventh general Head of this Chapter, *viz.* How ch nusances are to be removed and punished, I shall consider following particulars: First, In what order hedges and ches, adjoining to the highway, ought to be kept. Se- dly, How far all trees and bushes are to be removed from highway. Thirdly, In what manner all other annoyances structing the highway are to be removed. Fourthly, How far persons are punishable for taking away things made use of the benefit of the highway. Fifthly, How far they may be nished for drawing a carriage with more than five horses in gth.

Sect. 52. As to the first particular, *viz.* In what order edges and ditches, adjoining to the highway, ought to be ept. It is said, That he who hath lands next adjoining to a ighway, is bound of common right to scour his ditches; but is said, that he who hath lands next adjoining to such lands, not bound by the common law so to do, without some special escription for that purpose; and perhaps it is the better opi- ion, That he who hath trees next adjoining to the highway, and anging over it to the annoyance of the people, is bound by e common law to lop the same; and it seems clear, That y person may justify the lopping such trees, so far as to avoid e nusance.

8 Hen. 7. 5. Kitch. 34, 35. Dalton, c. 26. 144. Summary, 144.

† Sect. 53. However it is enacted by 13 Geo. 3. c. 78. ar. 7. "That all the possessors of the land next adjoining to "every highway shall cut, prune, and plash their hedges, and "also cut down or prune and lop the trees growing in or near "such hedges or other fences, (except those trees planted for "ornament or shelter, as hereafter mentioned) (b) in such man- "ner that the highways shall not be prejudiced by the shade "thereof respectively, and that the sun and wind may not be "excluded from such highway to the damage thereof, within "ten days after notice given by the surveyor for that purpose, "or the surveyor shall make complaint thereof to some justice

Trees adjoining to highways, whom and in what manner be cut and pruned.

(b) Vide infra sect. 59.

" of the limit, who shall summon the possessor of the said " lands to some special sessions, to answer to the said com- " plaint; and if it shall appear to the justices, that such pos- " sessor had not complied with the requisites of this act, the " said justices, upon hearing the surveyor and the possessor of " such land, or his agent, (or in default of his appearance " upon having due proof of the service of such summons) " and considering the circumstances of the case, may order " such hedges to be cut, plashed, and pruned, and such trees " to be cut down, or pruned in such manner, as may best " answer the purposes aforesaid; and if the possessor of such " lands shall not obey such order within ten days after due " notice thereof, he shall forfeit two shillings for every twen- " ty-four feet in length of such hedge which shall be so ne- " glected to be cut and plashed, and two shillings for every " tree which shall be so neglected to be cut down or pruned, " and lopped."

On default, the surveyor may prune, &c. at the cost of the defaulter.

† *Sect.* 54. And it is further enacted, "That the surveyor, " in case of such default, shall cut, prune, and plash such " hedges, and cut down or prune and lop such trees, in the " manner directed by such order; and such possessor shall be " charged with, and pay, over and above the said penalties, " the charges and expences of doing the same; or, in default " thereof, such charges and expences shall be levied, together " with the said forfeitures, upon his or her goods and chattels, " by warrant from a justice of peace, in such manner as is au- " thorised for forfeitures incurred by virtue of this act."

Occupiers to make drains and ditches, &c.

† *Sect.* 55. And it is further enacted, par. 8. "That " ditches, drains, or watercourses, of a sufficient depth and " breadth, for the keeping all highways dry, and conveying " the water from the same, shall be made, scoured, cleansed, " and kept open, and sufficient trunks, tunnels, plats, or " bridges, shall be made and laid where any cartways, horse- " ways, or footways, lead out of the said highways into the " the lands or grounds adjoining thereto, by the occupier of " such lands or grounds; and every person who shall occupy " any lands or grounds adjoining to, or lying near such high- " way through which the water hath used to pass from the said " highway, shall open, cleanse, and scour, the ditches, water- " courses, or drains, for such water to pass without obstruction; " and that every person making default, after ten days notice by " the surveyor, shall forfeit ten shillings."

Where the old ditches, &c. are not sufficient new ones are to be made.

† *Sect.* 56. And it is further enacted, by par. 14. "That " where the ditches, gutters, or watercourses, shall not be " sufficient to carry off the water which shall lie upon and " annoy the highways, the surveyors, by the order of any one

" of

of the ſaid juſtices, ſhall make new ditches and drains in and through the lands and grounds adjoining or lying near to ſuch highways, or in and through any other lands or grounds, if it ſhall be neceſſary, for the more eaſy and effectually carrying off ſuch water from the ſaid highways, and alſo to keep ſuch ditches, gutters, or watercourſes, ſcoured, cleanſed, and opened; and the ſurveyors, and their workmen, are authoriſed to go upon the lands, for the purpoſes aforeſaid."

Surveyors to make trunks, &c.

Sect. 57. And it is further enacted, "That the ſurveyors ſhall make proper trunks, tunnels, plats, bridges, or arches, over ſuch ditches, gutters, or watercourſes, for the convenient uſe and enjoyment of the lands or grounds through which the ſame ſhall be made, and keep the ſame in repair, and make ſatisfaction to the owner or occupier of ſuch lands which are not waſte or common, for the damages ſuſtained thereby; to be ſettled and paid in ſuch manner as the damages for getting materials in ſeveral or incloſed lands or grounds are hereafter directed to be ſettled and paid."

Sect. 58. As to the ſecond particular, *viz.* How far all trees and buſhes are to be removed from the highway, it appears from the above-mentioned (a) ſtatute of Wincheſter, chapter 5. "That no ſmall tree or buſh, whereby a man may lurk to do hurt, ought to be ſuffered to ſtand within two hundred foot of either ſide of a highway leading from one market-town to another."

(a) Vide ſupra, Sect. 26.

No tree, buſh, or ſhrub, to grow within 15 feet of the centre, &c.

Sect. 59. And it is farther enacted, by 13 Geo. 3. c. 7. §. 6. "That no tree, buſh, or ſhrub, ſhall be permitted to ſtand or grow in any highways within the diſtance of fifteen feet from the centre thereof (except for ornament or ſhelter to the houſe, building or court yard of the owner thereof); or hereafter to be planted within the diſtance aforeſaid; but the ſame ſhall be reſpectively cut down, grubbed up, and carried away by the owner or occupier of the land or ſoil, where the ſame doth or ſhall ſtand or grow, within ten days after notice to him, or his ſteward or agent, given by the ſaid ſurveyors, or any of them, on pain of ten ſhillings."

Time of cutting hedges and felling trees, &c.

Sect. 60. But it is alſo provided by the ſaid ſtatute, §. 13. "That no perſon ſhall be compelled, nor any ſurveyor permitted to cut or prune any hedge, than between the laſt day of December and the laſt day of March; and that nothing in this act contained ſhall oblige any perſon to fell any timber trees, in hedges, at any time whatſoever,

" except

" except where the highways shall be ordered to be enlarg
" or to cut down or grub up any oak trees growing within
" highway, or in such hedges, except in the months of Ap
" May, or June, or any ash, elm, or other trees, in any ot
" months than in the months of December, January, Febru
" or March.

Sect. 61. As to the third particular, *viz.* In what man
all other annoyances obstructing the highway, are to be rem
1 Jones 222. ed: it seems clear, That by the common law any one
abate a nusance to a highway, and to remove the materi
Vide 4 Assize 3. " but not convert them to his own use, as hath more fu
17 Ed. 3. 9. b. 2 Rol. Abr. 157. B. 4. 142, K. L. been shewn in the precedent Chapter. Also it seemeth,
an heir may be indicted for continuing an incroachment, or
nusance to a highway, begun by his ancestor, because such
continuance thereof amounts in the judgment of law to a
nusance.

† *Sect.* 62. But the common law, not having been thou
to have provided sufficiently against mischiefs of that kind,
is enacted by the above mentioned statute of 13 Geo. 3. c.
Penalty for nusances obstructing highways. par. 9. " That if any person shall lay, in any highway,
" stone, timber, straw, dung, or other matter, or in maki
" scouring, or cleansing, the ditches or watercourses, s
" permit the soil or earth dug out of such ditches, drains,
" watercourses, to remain in such highway, in such man
" as to obstruct or prejudice the same, for the space of
" days after notice thereof by the surveyor, he shall for
" ten shillings."

If not removed after notice, how to be disposed of. † And it is further enacted, par. 10. " That if any st
" or timber, or any hay, straw, stubble, or other matter,
" the making of manure, or on any other pretence whatsoev
" not tolerated by this act, shall be laid in any highway, wit
" the distance of fifteen feet from the centre thereof, and s
" not within five days after notice by the surveyor, or so
" person aggrieved thereby, be removed, the owner or poss
" of the lands adjacent, or any other person whomsoev
" by order from some justice, may remove the said stone, t
" ber, hay, straw, dung, or other matter, and have, take,
" dispose of the same, to his and their own use."

Obstructions to highways by carriages, &c. † And by par. 11. for preventing obstructions in the
highways, " That if any person shall wilfully set, place,
" leave, any waggon, cart, or other carriage, or any plou
" or instrument of husbandry, in any of the said highwa
" (except during the reasonable time of loading or unload
" and standing as near the side of such highway as possible) so as

...rupt or hinder the free passage of any other carriage, ...his majesty's subjects, every person so offending shall ...eit ten shillings.

...63. And it is further recited by the above-mentioned ...of 13 Geo. 3. c. 78. par. 64. "That whereas incon...ces have arisen from making hedges or other fences, ...from ploughing or breaking up the soil of lands or ...s near the middle or centre of highways: for remedy ...," it is therefore enacted, "That if any person shall ...roach, by making any hedge, ditch, or other fence, on ...highway, not being turnpike road, within the distance ...fifteen feet from the middle or centre thereof, or shall ...ugh, harrow, or break up the soil of any land or ...ound, or in ploughing or harrowing the adjacent lands ...ll turn his plough in or upon any land or ground within ...e distance of fifteen feet from the middle or centre of any ...ghway, where the breadth of such highway is formed and ...arked or described with certainty, and does not exceed in ...eadth thirty feet, he shall forfeit forty shillings to such ...rson who shall make information of the same; and the sur...yor may cause such hedge, ditch, or fence to be taken down, ...filled up, at the expence of the person to whom the same ...all belong: and any justice of the limit, upon proof to ...m upon oath, may levy as well the expences of taking ...own such hedges, as the several penalties hereby imposed, ...y distress and sale of the offender's goods and chattels."

Penalty of incroaching upon highways.

Incroachment to be taken down by surveyor.

And by par. 63. of the said statute for preventing obstruc..., which frequently happen by stopping of carriages on or ...publick bridges, it is further enacted, "That if any ...rson collecting any tolls payable for passing over any ...ublic bridge with carriages or cattle of any kind shall ...eep any victualling-house, alehouse, or other place of ...ublick entertainment, or shall sell, or permit to be sold ...herein, any wine, beer, ale, cyder, spirituous liquors, or ...her strong liquors, by retail, he, being convicted by one ...itness, or his own confession, before any justice of the ...mit, shall forfeit five pounds."

Alehouses not suffered on bridges where tolls are kept.

Sect. 64. As to the fourth particular, *viz.* How far all ...ons are punishable for taking away things made use of ...the benefit of highways, it is recited by the above-men...ed statute of 13 Geo. 3. c. 78. par. 53. "That whereas ...me places it hath been and may be found necessary to ...re horse causeways and foot causeways, by posts, blocks, ...great stones, fixed in the ground, or by banks of earth ...up, or otherwise, from being broken up and spoiled ...h waggons, wains, carts, or carriages, and as several ...l-disposed persons do or may wilfully or wantonly pull up,

Penalty for damaging banks, causeways, posts blocks, &c. &c.

up, cut down, and remove or damage the ſaid poſts, bl
and great ſtones, ſo fixed, or to be fixed, as aforeſaid,
drive carriages upon ſuch banks or cauſeways, or a
the ſides thereof, and alſo dig or caſt down the ſaid b
which are the ſecurities and defence of the ſaid cauſew
whereby the cauſeways or banks are often ruined and
ſtroyed; and ſuch evil diſpoſed perſons do or may b
damage, or throw down the ſtones, bricks, or wood,
upon the parapets or battlements of bridges, and do or
pull down, deſtroy, obliterate, or deface, any mile
or poſt, graduated or direction poſt or ſtone, erected
be erected upon any highway:" It is enacted, "That e
"perſon guilty of any ſuch offence, ſhall, upon complai
"any juſtice where the ſame ſhall be proved to be don
"the oath of one witneſs, or upon view of the juſtice
"ſelf, forfeit not exceeding five pounds, nor leſs than
"ſhillings; and in default of payment, ſhall be committe
"the houſe of correction of ſuch limit, to be whipped
"kept to hard labour not exceeding one calendar month,
"leſs than ſeven days. (20)

(20) The ſame proviſions are made in reſpect to turnpike roads by 13 Geo. 3. c. 84.

Sect. 65. As to the fifth particular, *viz.* How far per
may be puniſhed for drawing a carriage with more than
horſes in length, it is enacted, by 13 Geo. 3. c. 78. par.
"That no waggon, having the ſole or bottom of the fe
"of the wheels of the breadth of nine inches, ſhall go or
"drawn with more than eight horſes; and and that no c
"having the ſole or bottom of the fellies of the breadth
"nine inches, ſhall be drawn with more than five hor
"and that no waggon, having the ſole or bottom of
"fellies of the breadth of ſix inches, and rolling on each
"a ſurface of nine inches, ſhall go or be drawn with m
"than ſeven horſes; and that no ſuch waggon rolling a
"face of ſix inches only, ſhall go or be drawn with m
"than ſix horſes; and that no cart having the ſole or b
"tom of the fellies of the wheels of the breadth of ſix inch
"ſhall go or be drawn with more than four horſes; and t
"no waggon having the ſole or bottom of the fellies of
"breadth than ſix inches, ſhall go or be drawn with m
"than five horſes; and that no cart having the ſole or b
"tom of the fellies of leſs breadth than ſix inches, ſhall
"or be drawn with more than three horſes upon hi
"ways, not being turnpike roads, under pain, that the o
"ner of ſuch waggon or cart reſpectively ſhall forfeit
"pounds, and the driver not being the owner, ten ſhillin
"for every horſe or beaſt which ſhall be ſo drawing above
"number hereby ſo reſpectively limited, to the ſole uſe a
"benefit of the informer;—But carriages moving upon whe
"

Limitations of the number of horſes for carriages with different wheels.

The 6 Anne c. 29.
9 Anne c. 18.
1 Geo. 1. c. 11.
5 Geo. 1. c. 12.
Recited in the former edition repealed by the 7 Geo. 3. c. 42.

4 Burr. 2258. Stevens v. Duffey.

rollers, of the breadth of sixteen inches on each side of, with flat surfaces, are hereby allowed to be drawn any number of horses, or other cattle." (a)

(a) Vide appendix at the end of this ch. how these carriages are favoured in payment of tolls. Prosecutions for such additional horses how to be carried on.

But is provided, by par. 57. of the said statute, "That prosecution shall be commenced before a justice by information, for any forfeiture incurred by the owner or driver of any carriage, having a greater number of horses therein than are allowed by this act, unless within three days after the offence committed; and that no action shall be commenced for any such offence, unless within one calendar month; and that neither such information or action, unless notice shall be given by the informer to the driver of any such carriage, on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice, that the offender lives so remote as to make it inconvenient to summon him to appear, the justice may leave the informer to his remedy by action at law."

And it is further provided, by par. 58. "That the general quarter sessions, to be held in the week after *Michaelmas*, may license an increase of horses in carriages up any steep hill, or on any road not turnpike, over and above the number herein-before limited, if, upon inquiry into the state and condition of such roads, they shall find any additional number of horses necessary; and, from time to time, at any *Michaelmas* quarter sessions, to revoke, alter, or vary the same, as they shall think fit."

Justices at sessions may license an additional number of horses.

And it is further provided, by par. 59. "That if it shall appear upon the oaths of credible witnesses, to the satisfaction of any justice, or of court of justice authorised to enforce the execution of this act, that any carriage could not, by reason of deep snow or ice, be drawn by the number of horses or beasts allowed; such justice, or court respectively, is hereby required to stop all proceedings for the recovery of any penalty incurred by drawing with a greater number than are hereby allowed; provided that the regulations concerning the number of horses, and wheels of carriages, shall not be deemed or construed to extend to carriages, employed only in carrying any one stone, block or marble, cable rope, piece of metal, or piece of timber, or to such ammunition or artillery as shall be for his majesty's service; and that two oxen or horned cattle shall, for all the purposes of this act, be considered as one horse."

Justices may stop proceedings for forfeiture in respect of additional horses.

Vide Stevens and Dufty, 4 Burr. 2260.

Carriages excepted out of this act.

Two oxen equal to one horse.

And by par. 60. for the better discovery of offenders, it is enacted, "That the owner of every waggon, wain, cart, coach,

The owner's name, &c. to be painted on all carriages.

" coach, poſt-chaiſe, or other carriage let to hire, ſhall
" to be painted, upon ſome conſpicuous part of his wa
" wain, or cart, and upon the pannels of the doors of all
" coaches, poſt-chaiſes, or other carriages, before the
" ſhall be uſed upon any publick highway, his chriſtian
" ſurname, and the place of his abode, in large legible le
" and continue the ſame thereupon ſo long as ſuch wa
" cart, coach, poſt-chaiſe, or other carriage, ſhall be uſe
" on any ſuch highway; and the owner of every co
" ſtage waggon or cart, employed in travelling ſtages
" town to town, ſhall, over and above his or her chriſtia
" ſurname, paint, or cauſe to be painted, on the part, a
" the manner aforeſaid, the following words, " COM
" STAGE WAGGON or CART, as the caſe may be, upon
" of forfeiting a ſum not exceeding five pounds, nor leſs
" twenty ſhillings."

Drivers of carriages puniſhable for miſbehaviour or negligence; in order to prevent accidents.

Sect. 66. And it is further recited by the ſaid ſtatut
13 Geo. 3. c. 78. par. 61. " That whereas many bad
dents happen, and great miſchiefs are frequently done
the ſtreets and highways, by the negligence or wilful m
haviour of perſons driving carriages thereon;" it is there
further enacted, " That if the driver of any cart, car,
" or waggon, ſhall ride upon any ſuch carriage in any ſtre
" highway, not having ſome other perſon on foot, o
" horſeback, to guide the ſame, (ſuch carriages as are
" ducted by ſome perſon holding the reins of the horſe
" horſes drawing the ſame excepted); or if the driver of
" carriage whatſoever on any part of any ſtreet or high
" ſhall, by negligence, or wilful miſbehaviour, cauſe any
" or damage to any perſon or carriage paſſing or being u
" ſuch ſtreet or highway, or ſhall quit the highway, and go
" the other ſide the hedge or fence incloſing the ſame; or
" fully be at ſuch diſtance from ſuch carriage, whilſt it ſhall
" paſſing upon ſuch highway, that he cannot have the direct
" and government of the horſes or cattle drawing the ſame;
" ſhall, by negligence or wilful miſbehaviour, prevent, hind
" or interrupt the free paſſage of any other carriage, or of
" majeſty's ſubjects, on the ſaid highways; or if the driver
" any empty or unloaded waggon, cart, or other carriage, ſh
" refuſe or neglect to turn a ſide and make way for any coa
" chariot, chaiſe, loaded waggon, cart, or other loaded ca
" age; or if any perſon ſhall drive, or act as the driver, of
" ſuch coach, poſt-chaiſe, or other carriage let for hire, or w
" gon, wain, or cart, not having the owner's name as bef
" required, painted thereon, or ſhall refuſe to diſcover
" true chriſtian and ſurname of the owner of ſuch reſpecti
" carriages; being convicted by his own confeſſion, the vi
"

of a juſtice, or the oath of one witneſs, before any juſtice of the limit, ſhall for eit not exceeding ten ſhillings, in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe the offender be owner, then not exceeding twenty ſhillings; and in either caſe, ſhall, in default of payment, be committed to the houſe of correction, not exceeding one month, unleſs the ſame ſhall be ſooner paid; and every ſuch driver may, with or without any warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed to a peace officer, in order to be conveyed before ſome juſtice; and if any ſuch driver ſhall refuſe to diſcover his name, the juſtice before whom he ſhall be taken, or to whom any ſuch complaint ſhall be made, may commit him to the houſe of correction not exceeding three months, or proceed againſt him for the penalty aforeſaid, by a deſcription of his perſon and the offence, and expreſſing in ſuch proceedings that he refuſed to diſcover his name."

† *Sect.* 67. As to the eighth general Head of this Chapter, viz. In what manner thoſe, who are charged with any offence relating to the highway, are to be proceeded againſt: It is enacted by the above-mentioned ſtatute of 13 Geo. 3. c. 78. par. 70. "That the forms of proceedings in the ſchedule ſhall be uſed, upon all occaſions, with ſuch additions or variations only as may be neceſſary to adapt them to the particular exigencies of the caſe; and that no objection ſhall be made, or advantage taken, for want of form in any ſuch proceedings." The forms of proceeding.

† *Sect.* 68. And it is further enacted, by par. 71. "That the juſtices ſhall, at every ſpecial ſeſſions to be held in the week next after the *Michaelmas* general quarter ſeſſions, ſhall procure and deliver a printed abſtract of the moſt material parts of this act to every ſurveyor to be then appointed, as the charge hereby directed to be given; who ſhall ſeverally pay ſixpence for the ſame." Printed abſtracts to be given to the ſurveyors.

† *Sect.* 69. And it is further enacted by the ſame ſtatute, par. 73. "That all penalties and forfeitures, and all coſts and charges, (the manner of levying and recovering of which is not hereby otherwiſe particularly directed), ſhall be levied by diſtreſs and ſale of the goods and chattels of the offender, by warrant under the hand and ſeal of ſome juſtice for the limit where ſuch offence ſhall happen, or ſuch order for payment of ſuch coſts or charges ſhall be made, rendering the overplus to the party after deducting the charges of making the ſame; which warrant ſuch juſtice is hereby impowered to grant, upon conviction by Forfeitures, coſts and charges may be levied by diſtreſs, &c.

"confeſſion,

" confeſſion, or the oath of one witneſs, or upon order ma
" as aforeſaid; and when ſo levied, ſhall be paid, the o
In what manner to be applied. " half to the informer, and the other half to the furvey
" where ſuch offence ſhall happen; to be applied towar
" the repairs, unleſs otherwiſe directed by this act; but
" caſe the ſurveyor ſhall be the informer, then the wh
" ſhall be employed towards the repair of ſuch highway:
" And in caſe ſuch diſtreſs cannot be found, and ſuch pen
" ties or coſts and charges, ſhall not be forthwith paid, ſu
" juſtice is hereby authoriſed, by warrant under his hand
" ſeal, to commit ſuch offender to the common gaol or hou
" of correction of the limit where the offence ſhall be com
" mitted, or ſuch order as aforeſaid ſhall be made, for a
" time not exceeding three months, unleſs the ſaid penalt
" coſts, and charges, ſhall be ſooner paid; and if ſuch offe
How to proceed when the offender lives within another juriſdiction. " der ſhall live out of the juriſdiction of the juſtice, any ju
" tice of the limit wherein ſuch perſon ſhall inhabit, upon re
" queſt to him for that purpoſe made, and upon a true cop
" of the conviction, and order for the payment of ſuch co
" and charges, produced and proved by a credible witneſs up
" on oath, may, by warrant under his hand and ſeal, cauſ
" the penalty mentioned in ſuch conviction, and the coſts an
" charges mentioned in ſuch order, or ſo much thereof as ſha
" not have been paid, to be levied, by diſtreſs and ſale o
" the goods and chattels of ſuch offender; and if no ſufficien
" diſtreſs can be had, commit ſuch offender to the commo
" goal, or houſe of correction of ſuch limit, for the time
" and in manner aforeſaid."

† Provided by par. 74. " That no warrant of diſtreſs, unleſ
Warrant of diſtreſs when to be iſſued. " otherwiſe directed by this act, ſhall be iſſued for levying
" any penalty, coſts or charges, until ſix days after the offen
" der ſhall have been convicted, and an order made and ſerve
" upon him or her for payment thereof."

† *Sect.* 70. And it is further enacted, par. 77. " That no
Convictions how to be made. Strange 182. 10 Modern 150. " conviction ſhall be made unleſs upon confeſſion, or the oath
" of one witneſs, or the view of a juſtice in the caſes before
" mentioned; and that any inhabitant ſhall be deemed a com-
" petent witneſs."

(21) Vide Kelynge 34. Str. 900. 944. B. R. H. 99. Seſſ. Caſ. 179, 415. Strange 1209. Barn. K. B. 111, 445. 1 Black. 467.

† *Sect.* 71. And it is farther enacted by the ſaid ſtatute, 13 Geo. 3. c. 78. ſ. 24. " That every juſtice of aſſize, juſ-
" tices of the counties palatine of Cheſter, Lancaſter, and
" Durham, and of the great ſeſſions in Wales, ſhall have
" authority by this ſtatute, upon his or their own view, and
every juſtice of the peace, either upon his own view, (21)
" or upon information upon oath to him given by any ſurveyor
" of the highways, to make preſentment, at their reſpective
" aſſizes or great ſeſſions, or in the open general quarter ſeſ-
" ſions,

tions, of such respective limit, of any highway, causeway, or bridge, not well and sufficiently repaired and amended, or of any other default or offence committed and done contrary to the provision and intent of this statute; and that all defects in the repair thereof shall be presented in such jurisdiction where the same do lie, and not elsewhere; and that no such presentment, nor any indictment for any such default or offence, shall be removed by *certiorari*, or otherwise, out of such jurisdiction, till such indictment or presentment be traversed, and judgment thereupon given, (22) except where the duty or obligation of repairing the said highways, causeways, or bridges, may come in question; and that every such presentment made by any such justice of assize, counties palatine, great sessions, or of the peace, upon his own view, or upon such information having been given to such justice of the peace, upon the oath of such surveyor of the highways, as aforesaid, shall be as good, and of the same force, strength, and effect, in the law, as if the same had been presented and found by the oaths of twelve men; and that for every such default or offence so presented, as aforesaid, the justices of assize, counties palatine, and great sessions, at their respective courts, and the justices of the peace, at their general quarter sessions, shall have authority to assess such fines as to them shall be thought meet: saving to every person and persons that shall be affected by any such presentment, his, her, or their lawful traverse to the same presentment (23), as well with respect to the fact of non-repair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same, presented and found by a grand jury; and the justices of the peace, at their general quarter sessions, or the major part of them, may, if they see just cause, direct the prosecutions upon such presentments as shall be made at the quarter sessions, as aforesaid, to be carried on at the general expence of such limit, and to be paid out of the general rates within the same.

Justices of assize and of the peace &c. to present highways, &c. out of repair.

(23) It is now settled that the justices are compellable by mandamus to receive a general traverse to a presentment of a highway being out of repair, made by a justice of peace upon view. Burr, 1532. 4 Modern 38 Show. 270. 1 Black. 468.

(22) This clause is copied from a similar clause in 22 Car. 2. c. 12 s. 4. and upon the authority of the King v. Farewell. 2 Strange 1209, which was an application for a *certiorari* to remove an indictment upon that highway act, it was resolved, Trin. 14. Geo. 2, that a *certiorari pro rege* lies upon 13 Geo. 3. c. 78 s. 24. before traverse of the indictment and judgment thereupon: for the King does not traverse, and therefore the words "till such indictment be traversed," shew very plainly that this clause was not intended to take away the writ of *certiorari* at the instance of the Crown—and although a private person is the real prosecutor, *yet in these cases* that circumstance makes no distinction; for it was calculated merely to prevent delay on the part of defendants. Rex. v. Inhabitants of Bodenham. Cowper 78.

Sect. 72. It hath been holden in the exposition of this clause, That the party against whom such a presentment shall be made, cannot take any traverse to the want of repair of such highway; but it is agreed, That he may plead that some other

Kellw. 34. Crom. 131. Dalt. c. 6. 1 Black. 467.

other perſon ought to repair the ſame, and traverſe his o
obligation to do it. Neither can I ſee upon what reaſon
former opinion is grounded, that he cannot traverſe the w
of repair of ſuch highway; for ſince the ſtatute expreſsly ſa
to every perſon who ſhall be touched by any ſuch preſentme
his lawful traverſe to the ſame, as he might have to an indi
ment of treſpaſs or forcible entry;" and ſince it ſeems clear, T
every defendant to any ſuch indictment may traverſe the w
matter alledged againſt him, as hath been ſhewn more at la
Chap. 64. Sect. 58. why may he not as well have the ſa
benefit in the preſent caſe? And though the record of a j
tice of peace acting by force of any ſtatute, as a judge, be
traverſable; yet it ſeems hard by ſuch a general rule, to m
any record not traverſable, which by the expreſs words of
ſtatute, which authoriſes the making of it, is allowed to
traverſable: it is true indeed, That a preſentment in a cou
leet is not traverſable, unleſs it touch the party's freehold:
I do not ſee why ſuch a preſentment in purſuance of this ſta
ſhould have the like privilege ſince the ſtatute hath no ment
of ſuch preſentments in courts-leet, but gives the like trave
as is allowed by law upon any indictment of treſpaſs, &c.

See Carth. 212, 213. Sup. 2. 64. f. 18. 5 Hen. 7. Dyer. 13.

Aſſeſſments may be levied by diſtreſs.

† *Sect.* 73. And it is alſo enacted, 13 Geo. 3. c. 78. by p
68. "That if any perſon ſhall refuſe or neglect to pay
"aſſeſſment within ten days after demand thereof made,
"ſame ſhall be levied by any perſon authoriſed by warrant
"der the hand and ſeal of one juſtice, having juriſdict
"therein, by diſtreſs and ſale of the goods and chattels of
"perſon ſo refuſing or neglecting, rendering the overplus,
"neceſſary charges of making ſuch diſtreſs and ſale being
"deducted; and in default of ſuch diſtreſs, any ſuch juſt
"may commit the perſon to the common gaol, until he ſh
"have paid the ſum ſo aſſeſſed, and the coſt and charges oc
"ſioned by ſuch neglect or refuſal.

† And by par. 69. "That the ſurveyor ſhall be deeme
"in all caſes, a competent witneſs, notwithſtanding his
"lary may ariſe in part from the forfeitures and penal
"hereby inflicted."

How the proſecutor may proceed, for a forfeiture above 40s.

† *Sect.* 74. And it is alſo enacted by par. 75. "T
"every proſecutor or informer may, at his election, ſue f
"and recover any penalty of forty ſhillings or upwards,
"manner of recovery thereof not being particularly direct
"by this act), either in the manner herein-before direct
"or by action at law, in any of his Majeſty's courts of
"cord, by action of debt, in which it ſhall be ſufficient
"declare that the defendant is indebted, as deſcribed in

act, and the plaintiff, if he recovers, ſhall have double coſts."

Limitation of actions and notice.

† Sect. 75. Provided, par. 76. "That there ſhall not be more than one recovery for the ſame offence; and that ten days notice in writing be given to the party offending previous to the commencement of ſuch action; and that the ſame be brought and commenced within one calendar month after the offence for which ſuch action is brought, ſhall have been committed."

Special damage but diſtreſs not unlawful for want of form.

† Sect. 76. And it is further enacted, par. 79. "That where any diſtreſs is levied, the diſtreſs itſelf ſhall not be deemed unlawful, nor the party making the ſame a treſpaſſer, on account of any default or want of form in any proceedings relating thereto, nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio*, on account of any irregularity which ſhall be afterwards done by the party diſtraining, but the perſon aggrieved by ſuch irregularity, may recover full ſatisfaction for the ſpecial damage in an action on the caſe."

(24) A perſon indicted for not repairing roads *ratione tenuræ*, ſhall on ſubmitting, pay coſts to the proſecutor. Rex. v. Wingfield, 6 Geo. 3. 1 Black. 602.

† Sect. 77. And it is further enacted, par. 65. "That the court before whom any indictment or preſentment (24) ſhall be tried, may award coſts to the proſecutor, to be paid by the perſon ſo indicted or preſented, if it ſhall appear that the defence was frivolous; or to award coſts to the perſon indicted or preſented, to be paid by the proſecutor, if it ſhall appear that ſuch proſecution was vexatious."

† And it is further enacted par. 66. "That if the inhabitants ſhall agree, at a veſtry or publick meeting, to proſecute any perſon by indictment, or to defend any indictment or preſentment preferred againſt any pariſh, townſhip, or place, the ſurveyor may charge in his account the reaſonable expences incurred in carrying on or defending ſuch reſpective proſecutions, after the ſame ſhall have been agreed to by ſuch inhabitants at a veſtry or publick meeting, or allowed by a juſtice within the limit where ſuch highway ſhall be; which expences ſhall be paid out of the fines, forfeitures, compoſitions, payments, and aſſeſſments."

† And is further enacted, par. 67. "That in all caſes where a veſtry or publick meeting of the inhabitants is directed by this act, there ſhall be publick notice given of the day, hour, and place, of holding the ſaid meeting, at the church or chapel of ſuch pariſh, townſhip, or place, on the Sunday next preceding ſuch meeting, and alſo notice thereof in writing, ſpecifying the purpoſe of ſuch meeting, fixed at the ſame time upon the door of ſuch church

" or chapel, and the ſame ſhall not be held till three d
" at leaſt after ſuch notice given; and if there be no c
" or chapel, the like notice of ſuch meeting ſhall be giv
" writing, and put up at the moſt publick place the
" three days at leaſt before ſuch meeting."

Forfeiture for oppoſing the execution of the act.

† And it is further enacted, par. 72. "That in caſe
" perſon ſhall reſiſt or make forcible oppoſition againſt
" employed in the due execution of this act, or make
" reſcue of the cattle or other goods diſtrained, or if
" conſtable, headborough, or tithingman, ſhall refuſe or
" leſt to execute or obey any warrant or precept granted by
" juſtice, purſuant to the directions of this act, being conv
" by a juſtice, ſhall forfeit not exceeding ten pounds,
" leſs than forty ſhillings; to be paid to the ſurveyor
" where the offence was committed, to be laid out in
" repair of the highways: and in caſe he do not forth
" pay, or ſecure to be paid, the ſaid forfeiture after ſuch
" viction, ſuch juſtice may commit ſuch perſon to the com
" gaol or houſe of correction of the limit, to remain not
" ceeding three months, unleſs the ſaid forfeiture ſhall
" ſooner paid."

(25) Vide 1 Black. 603.

2 Strange 1209. 2 Strange 944. See B. 2. C. 27. S. 37, 46, 47. Cowper 78.

Sect. 78. It is enacted by the ſaid ſtatute of 13 Geo
c. 78. ſ. 24. "That all defects of repairs of cauſeys, p
" ments, highways or bridges, ſhall be preſented in the co
" only where ſuch cauſeys, &c. lie, and not elſewhere;
" that no ſuch preſentment, or indictment ſhall be remo
" by *certiorari*, or otherwiſe, out of the ſaid county, till
" indictment or preſentment be traverſed, and judgment th
" upon given."

Sect. 79. And it is farther enacted by the ſaid ſtat
ſection 81. "That all matters concerning highways, cauſ
" pavements, and bridges, mentioned in the ſaid act, ſhall
" determined in the county where the ſame do lie, and
" elſewhere; and that no preſentment, indictment or or
" made by virtue of the ſaid act, ſhall be removed by *certio*
" out of the ſaid county into any other court."

Queenv. Bramby Mic. 10 Ann. Strange 849, 900, 944, 1209. Bar K. B. 111, 236, 445. Caſ. Temp. King &c. 99. Seſſ. Caſes 163, 329.

Sect. 80. Yet it hath been reſolved, That if the qua
ſeſſions, under pretence of the juriſdiction given them
theſe ſtatutes, take upon them to do a thing manifeſtly exceed
their authority, as to make an order on ſurveyors of the hi
ways, to make up their accounts before a ſpecial ſeſſions, t
proceedings may be removed by *certiorari* into the King's Ben
and there quaſhed; for the quarter-ſeſſions have no manner
power given them to intermeddle originally with ſuch accou
but only by way of appeal. (26)

(26) And if the proſecutor has enlarged the rule for ſhewing cauſe why the order ſho
not be quaſhed, he cannot afterwards object to the iſſuing of the *certiorari*. 2 Burr. 7

† Sect. 81. And it is further enacted, par. 78, "That any justice may administer an oath to any person for the better discovery and execution of the several matters or things herein-before authorised or directed to be examined, enquired into or performed by such justice." Oaths.

† And it is further enacted, par. 62. "That any two justices are hereby impowered, to hold any special sessions, besides † at which is herein-before directed, for executing the purposes of this act; and to adjourn the same from time to time, as they shall think fit, causing notice to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable, or other proper officer within the same." Justices may hold special sessions on notice.

† Sect. 82. As to the ninth general head of this chapter, viz. In what manner persons proceeded against for any of the above-mentioned offences may defend themselves; it is enacted by the said statute, 13 Geo. 3. c. 78. par. 81. "That any person aggrieved by any person, in the execution of this act, and for which no particular method of relief hath been appointed, may appeal to the general quarter sessions, such appellant giving notice in writing of such appeal, and of the matter thereof, to the person against whom such complaint shall be made, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before some justice within such limit, with one surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the quarter session; and every person having received notice of such appeal, shall return all proceedings before them to the general quarter sessions, on pain of five pounds; and the said session, upon due proof of such notice and recognizance, shall hear and finally determine such appeal in a summary way, and award costs to the parties appealing or appealed against, to be levied as before directed; and the determination of such quarter session shall be final and conclusive, and no proceedings shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatsoever, (except as herein-before mentioned), into any court of record at *Westminster*, provided that no such appeal shall be made against any conviction for any penalty, unless the person convicted, shall at the time of such conviction, if present, if not, within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty, in case such conviction shall be affirmed; and upon his giving such Appeal may be made to the quarter sessions.

Proceedings not to be quashed for want of form, nor to be removed by *certiorari*

" ſecurity, the further proceeding for ſuch penalty ſhall b
" pended until ſuch appeal ſhall be heard and determined."

Limitation of actions, and mode of pleading.

† And it is further enacted, by par. 82. "That
" action or ſuit ſhall be commenced or proſecuted
" three calendar months after the fact committed, a
" afterwards; and ſhall be brought within the county
" the fact was committed, and the defendant may ple
General iſſue. " general iſſue, and give this act, and the ſpecial ma
" evidence. And if brought after the time limited
" laid in any other place than as aforementioned, the
" ſhall find for the defendant; or if the plaintiff ſhall be
" nonſuit, or diſcontinue after the defendant ſhall hav
" peared, or if, upon demurrer, judgment ſhall be
" againſt the plaintiff, the defendant ſhall recover
Treble coſts. " coſts."

Plaintiffs not to recover if tender of amends is made.

† But it is alſo provided by par. 80. "That no pl
" ſhall recover for any irregularity, treſpaſs, or wrongf
" ceedings, if tender of ſufficient amends ſhall be made
" ſuch action brought; and in caſe no ſuch tender ſhall
" been made, the defendant by leave of the court at any
" before iſſue joined, may pay into court ſuch ſum of
" as he ſhall ſee fit. But nothing in this act contained
" extend to the city of *Briſtol*, or to the pariſh of *White*
" and Saint *John*, *Wapping*, nor to abridge the powers o
" commiſſioners of ſewers, &c."

N. B. (27) This obſervation was applied to the former ſtatutes upon this ſubject.

Sect. 83. Alſo it ſeems to be implied in the conſtru
of theſe (27) as well as of all other penal ſtatutes, That n
ought to be convicted of any offence againſt them, wi
having notice of the accuſation made againſt him, an
opportunity of defending himſelf. And therefore I ſhall
it for granted, that generally no one ought to be pu
for any of the above mentioned offences, without being c
upon to anſwer for himſelf, and having liberty to traverſe
matters alledged againſt him; it is true indeed, That it i
nerally holden, That no traverſe can be taken againſt a
ſentment by a juſtice of peace of his own knowledge, a
the want of repair; yet this opinion ſeems juſtly queſtio
for the reaſons alledged in the ſeventy-ſecond ſection of
chapter.

Sect. 84. However it is certain, That in all other c
whoever is indicted or preſented in any court, except a co
leet, for any offence relating to the highways, may tra
the whole matter alledged againſt him in ſuch indictmen
preſentment. But it ſeemeth to be agreed, That he, wh
preſented for ſuch an offence in a court-leet, can only
verſe it ſo far as it concerns his freehold, as by charging

being bound to such repairs in respect of the tenure of lands, &c. for which purpose it is certain that he may remove it by a *certiorari* into the King's Bench, and there traverse it. Also there is no doubt, but that after conviction, or upon a demurrer or confession, any one may take exceptions to any such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions before such conviction or confession, without a certificate and affidavit that the ways are in good repair. 5 H. 7. 4. Dyer 1. Finch 386. Anderson 234. 1 Keble 256. 291, 829. 2 Keble 715. 728.

Sect. 85. Therefore, for the better understanding in what cases it may be safe to demur to, or confess an indictment or presentment of this kind, I shall lay down the following rules concerning them.

Sect. 86. First, That it is (a) safest in every such indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead, yet exceptions for want of such certainty have sometimes been (b) allowed; however it seems certain, that there is no necessity to shew (c) that a highway leads to a market-town, because every highway leads from town to town. (a) 2 R. Abr. 81. Palmer 420. (b) 2 Keble 715. 728. 3 Keble 89. 644. Vide 4 Burr. 2091. Lucas 383. where an objection of this kind is disallowed. 1 Brownl. 9. (c) Palmer 389. 2 Roll. Abr. 412. BRH. 316.

Sect. 87. Secondly, That it is necessary (d) in every such indictment expresly to shew in what place the nusance complained of was done, for which (e) cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good; for it is impossible that a way leading from *D.* should be in *D.* and no other place is alledged. (28) (d) 3 Keble 644. (e) 2 R. Abr. 81. Cowp. 111.

(28) So also in a presentment the highway must be alledged to lie in the parish, otherwise the parish is not bound to repair. Cowp. 111. Stra. 181. But in an indictment for a nusance, it is not necessary to mention the *termini* of a highway. Stra. 44. Also if there be two vills in a parish, it is not necessary in an indictment for a nusance to shew in which vill the nusance lies. Sayer 119.

Sect. 88. Thirdly, That every such indictment ought also certainly to shew what part of the highway the nusance did extend, as by shewing how many foot in length, and how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and upon this ground it hath been adjudged, That an indictment for stopping a certain part of the king's way at *K.* is naught, for the uncertainty thereof. Also it hath been resolved, that the place wherein such a nusance is alledged, is not sufficiently ascertained in such an indictment, C. Jac. 324. Latch 183. 2 R. Abr. 80, 81.

2 Roll. Abr. 84. indictment, by ſhewing that it contained ſo many foot in leng and ſo many in breadth, by eſtimation. (29)

(29) An indictment, for a nuſance in laying ſoil in a highway is not bad for want of le gth and breadth of the nuſance being ſet out. Pr. Lee C. J. Trin. 27. Geo. 2. Ba 980. Nor for a nuſance in digging two grips or ditches in a common footway. Sayer 301. Nor for a nuſance that a certain highway and bridge are in a ruinous condition. Sa

Salkeld 359. 6 Modern 255, Contra Sayer 168, 169. (a) 1 Liv. (c) C. Eliz. 63. (b) See 2 R. A. 83. 1 Ventris 208. Popham 206. 2 Keble 728. (c) 1 Vent. 208. 3 Keble 28,

Sect. 89. Fourthly, That every ſuch indictment muſt ſhew That the way wherein a nuſance is alledged, is a way com mon to all the king's people; for which cauſe it hath been re ſolved that an indictment for a nuſance to (a) horſeway without adding that it is a highway, is naught: and upon th ſame ground it ſeemeth alſo, That an indictment for a nu ſance to a common footway to the church of *D.* for (b) a the pariſhioners of D. is not good; yet it (c) ſeems, That i thoſe laſt words, *viz.* "For all pariſhioners of *D.*" had bee omitted, ſuch an indictment might be maintained.

(d) Noy 93. 3 Keble 855. The contrary adjudged Paſch. 5 Geo 1. the King v. Corrack. Vide Vent. 331, according.

Sect. 90. Fifthly, That it is not ſafe in an indictment againſ a common perſon for not repairing a highway, which he ought to have done in reſpect of the tenure of certain lands, barely to lay that he was bound to repair it *ratione tenuræ terræ* without adding (d) *ſuæ* (30) alſo it is ſaid, That in an indict ment againſt a (e) biſhop, *&c.* for not repairing a highway, in reſpect of certain lands, it ought to be ſhewn in what capacity he ought to repair it, becauſe otherwiſe it cannot be known in what capacity the proceſs is to be awarded againſt him.

2 Keble 514. Raymond 182. (e) 3 Keble 58. (30) If a man be charged to repair *ratione tenuræ*, he may throw it upon the pariſh by the general iſſue. Stra. 184. And it hath been held, upon conſideration that *ratione tenuræ* is ſufficient without *ſuæ*. Strange 187.

11 Modern 56. 1 Anderſon 234. Popham 206.

Sect. 91. Sixthly, That in every ſuch indictment the fact alledged againſt the defendant muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, That a preſentment for diverting a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it be obſtructed, and a new way made in another place.

2 Roll. Abr. 79. 81.

Sect. 92. Seventhly, That an indictment againſt a man for ſtopping a highway in his own land is good, without laying the offence done *vi & armis*. Alſo it is ſaid, That a preſentment that a highway in ſuch a place is decayed by the defaults of the inhabitants of ſuch a town, is good without naming any perſon in certainty. But it hath been adjudged, That an indictment againſt particular perſons muſt ſpecially charge them every one; for which cauſe it hath been reſolved, That an indictment againſt ſeveral for not repairing their ſtreets, that they, *& eorum uterque*, did not repair them, is not good.

Sect. 93.

Sect. 93. Eighthly, That the defendants ought not to plead *quod non debent reparare*, without shewing who ought. 1 Sid. 140. Carthew 213. 11 Modern 273. 12 Modern 13.

Sect. 94. That the defendants shall not be discharged by submitting to a fine, but a distringas shall go *in infinitum* till they repair. Salkeld 358. 6 Modern 163.

APPENDIX THE FOURTEENTH, (a)

(a) Vide ante, page 244.

OF TURNPIKE ROADS.

THE turnpike roads of England are placed under the management and direction of certain bodies of trustees, who are usually named and appointed by the respective acts of parliament which are occasionally passed for the purpose of making, repairing, and sustaining the particular roads therein specified. But the powers of these statutes being confined to separate and distinct objects, it was thought expedient to pass some general laws which should apply in common to all trustees and turnpike roads in general, throughout the kingdom. These laws I shall endeavour to comprize under the following particulars:

Vide Scott's Digest of the highway and turnpike road acts *passim*.

1. As to trustees.
2. As to weighing engines; the weight allowed, and tolls.
3. As to carriages.
4. As to exemptions from toll.
5. As to statute duty and repairs.
6. As to materials for repairs.
7. As to nusances.
8. As to subscribers and mortgagees.
9. As to officers in general.
10. As to repairing altered roads.
11. How far the powers of the highway act may be adopted.
12. As to the modes of proceeding.

† *Sect.* 1. First, As to trustees, it is recited, that many mischiefs have arisen from mean persons acting in that capacity, in the execution of those acts of parliament, as have incautiously omitted to direct that trustees shall be possessed of property to a certain value: it is therefore enacted by the general turnpike act, 13 Geo. 3. c. 84. (1) s. 44. "That no trustee shall be qualified for that office, unless he shall, in his own

Trustees, how to be qualified.

(1) By 21 Geo. 3. c. 20. this act is extended to all acts of parliament which have been made since, and which shall hereafter be made for the amending or repairing any particular turnpike roads in England.

"own or his wife's right, be in the actual poſſeſſion or receipt
"of the rents and profits of lands, tenements, or hereditaments of the clear yearly value of 40l. or poſſeſſed of or
"intitled to a perſonal eſtate worth 800l. or ſhall be heir apparent to a landed eſtate of 80l. a year; and unleſs (not being ſuch heir apparent) he ſhall take and ſubſcribe the
"oath in the act recited, before two or more of the truſtees
"appointed by ſuch act; and if he ſhall preſume to act as a
"truſtee, without being thus qualified, he ſhall forfeit 50l. to
"any perſon who ſhall ſue for the ſame, who ſhall recover
"without any other proof or evidence, that ſuch perſon hath
"acted as a truſtee, except ſuch perſon ſhall prove that he is
"qualified in the manner above mentioned."

No publican can be a truſtee.

Sect. 2. And it is further enacted, par. 46. "That no
"perſon who ſhall keep any victualling-houſe, ale-houſe, or
"other houſe of publick entertainment, or who ſhall ſell any
"wine, cyder, beer, ale, ſpirituous or other ſtrong liquors
"by retail, ſhall be capable of acting as a truſtee, or of hold-
"ing any place of truſt or profit under the truſtees, or of col-
"lecting the tolls. But no ſuch perſon ſhall be precluded
"from farming ſuch tolls, provided he employs a perſon to
"collect them, who ſhall not be under ſuch incapacity."

What ſhall be evidence of a truſtee.

And it is further enacted, par. 64. "That in all caſes
"where any action ſhall be brought againſt any truſtee, evi-
"dence of acting as ſuch, together with the act of parlia-
"ment by which he or they were appointed, or the order, or
"a copy of the order for the appointment or election, &c.
"ſhall be ſufficient proof his being truſtee."

Their meetings regulated.

† *Sect.* 3. And it is further enacted by the ſaid ſtatute, par.
49. amended and explained by 18 Geo. 3. c. 63. "That
"in all caſes, where the truſtees appointed by any act of par-
"liament, ſhall not meet on the day appointed for their firſt
"meeting by any ſuch act; or on any day appointed by ad-
"journment; or have not adjourned in the manner directed
"by any ſuch act; or when the day appointed for the firſt
"meeting of the truſtees has elapſed before the paſſing of any
"ſuch act; any five or more of the truſtees appointed to ex-
"ecute ſuch act, ſhall and may, in any or either of the caſes
"aforeſaid, cauſe notice under their hands to be affixed on
"all the turnpike gates, which ſhall be then erected on the
"roads for which they are truſtees; or if no turnpike gate
"ſhall be then erected, ſhall cauſe the like notice to be affixed
"in ſome conſpicuous place, in one of the market towns near
"the roads directed to be repaired, and alſo ſhall publiſh in
"ſome newſpaper circulated in that part of the country, at
"leaſt

" leaſt *twenty days* before the intended meeting appointing the " truſtees to meet at the place where the laſt preceding meet- " ing was appointed to be held; or at the place directed for " the firſt meeting of ſuch truſtees, if no preceding meeting " ſhall have been held, and the ſaid truſtees, when met in " purſuance of ſuch notice, ſhall and may carry ſuch act or " acts into execution, in the ſame and as full and ample a " manner, as if no ſuch neglect or omiſſion had happened, " or ſuch act had been paſſed previous to the time appointed " for the firſt meeting; and ſuch truſtees had met accord- " ingly."

† *Sect.* 4. But it is provided by 13 Geo. c. 84. ſ. 50. " That no meeting of ſuch truſtees ſhall be adjourned for any " longer time than three calendar months, from the day on " which ſuch adjournment ſhall be made; and that no buſineſs " ſhall be done at any meeting before ten in the forenoon; and " no adjournment ſhall be made to any hour later than two in " the afternoon, on which ſuch meeting ſhall be appointed to " be held; and that every act agreed upon at ſuch meeting " ſhall be ſigned, at the meeting, by a competent number of " truſtees, or otherwiſe ſuch meeting, adjournment, and act " reſpectively, ſhall be void." In what manner the meetings ſhall be adjourned.

† *Sect.* 5. And it is further enacted, par. 51. " That if " the truſtees abuſe or exceed their power, by erecting, or con- " tinuing any gate or turnpike, where they have not any power " by virtue of any act, the juſtices of the limit where any ſuch " gate or turnpike ſhall be erected or continued, in their general " quarter ſeſſions aſſembled, upon complaint of ſuch abuſe or " exceſs of power in ſuch truſtees, ſhall in a ſummary way hear " and determine the ſame, and thereupon to order the ſheriff " of the county, who is hereby authoriſed and required to exe- " cute ſuch order to remove the ſame." If they exceed their power in erecting gates, the juſtices may order the gates to be removed.

† *Sect.* 6. And it is further enacted, par. 84. " That where " any oath is required to be taken by this act, the juſtices of any " limit, or the truſtees of any turnpike road, as the caſe may " be, according to their ſeveral juriſdictions, are empowered " to adminiſter the ſame." May adminiſter oaths. Vide highway act, Sect. 78. Ante, p. 419.

† *Sect.* 7. And whereas there are no powers given to the truſtees to let or farm out the tolls ariſing upon turnpike roads, and in many caſes where the particular acts have given ſuch power, they are not executed in the moſt beneficial manner for ſuch roads; it is therefore enacted, par. 31. " That any " ſeven truſtees, at a publick meeting, may let to farm the " tolls of the ſeveral gates erected upon their reſpective turn- " pike roads, viz. The truſtees ſhall cauſe notice to be given Truſtees may farm out the tolls. Under particular directions and reſtrictions,

" of

"of the time and place for letting the same at least one month
"before the day appointed for that purpose, by fixing the
"same upon every toll-gate belonging to such turnpike road,
"and also upon the market cross of the market town nearest
"to the place where the said tolls are to be let, and also in
"some publick newspaper circulated in that part of the coun-
"try, and specifying in every such notice the sum which the
"said tolls produced in the preceding year, clear of the sa-
"lary for collecting the same; and that they will let such
"tolls by auction to the best bidder, on his producing suffi-
"cient sureties for payment of the money monthly, or quar-
"terly, as the trustees shall require; and that they will be put
"up at the sum which they were let for or produced in the
"preceding year, clear of the salary of the collector."

The method by which they shall farm out the tolls.

† *Sect.* 8. And it is further enacted, "That the trustees
"shall provide a glass, with so much sand in it, as will run
"from one end of it to the other in one minute; which glass,
"at the time of letting the said tolls, shall be set upon a table,
"and immediately after every bidding the glass shall be turned,
"and as soon as the sand is run out, it shall be turned again,
"and so for three times, unless some other bidding intervene:
"and if no other person shall bid, until the sand shall have
"run through the glass for three times, the last bidder shall be
"the farmer or renter of the said tolls, and shall forthwith
"enter into a proper agreement for the taking thereof, and
"paying the money at the times specified in such notice, or
"as shall be agreed upon between him and the said trustees.
"And in case no bidder shall offer, the trustees may appoint
"a collector of such tolls, or fix some future day for the let-
"ting thereof, as they shall judge most proper, upon giving
"notices as aforesaid, and shall and may in that case put
"them up at such sum as they shall think fit."

Penalty for taking more or less toll.

† *Sect.* 9. And it is further enacted, "That if the farmer
"or renter of such tolls shall take a greater or less toll, than is
"authorised and directed by this, or the particular turnpike
"act, he shall, for every offence, forfeit five pounds—and
"every other gate keeper shall forfeit 40s."

Trustees may reduce the tolls at any publick meeting.

Sect. 10. And it is further enacted, par. 29. "That
"trustees, or any seven or more, at a meeting for the pur-
"pose, of which one calendar month notice shall be given in
"writing, to be affixed on the turnpike gates, or circulated
"in some newspaper, may lessen or reduce all or any of the
"tolls on the roads, for which they are trustees, for such time
"as they shall think fit, and afterwards, at a meeting as
"aforesaid, may, if they shall see occasion, advance all or
"any of the tolls so lessened, to any sum not exceeding the
"several rates granted by the acts. But if the whole money

"borrowed

"borrowed on ſuch tolls is not diſcharged, no ſuch altera-
"tions ſhall be made, without the conſent of four fifths of the
"creditors, for ſuch ſums as ſhall remain due on the reſpective
"tolls."

† *Sect.* 11. And it is further enacted, par. 47. "That the
"truſtees or any five or more, at a publick meeting, may direct
"proſecutions by indictment againſt any offender for any nuſance
"done, committed, or continued in or upon any turnpike
"road under their care reſpectively, at the expence of the
"revenues belonging to ſuch roads, to be allowed by the truſ-
"tees, or any five or more at ſome ſubſequent meeting; pro-
"vided ſuch offender ſhall confeſs, or the truſtees can ſup-
"port the proſecution by one witneſs who ſhall prove the
"fact."

May direct proſecution for nuſances.

† *Sect.* 12. And it is further enacted, par. 54. "That any
"two or more truſtees, upon the death of any toll-gatherer
"or gate-keeper, may nominate and appoint another, until the
"next meeting of the truſtees, who ſhall poſſeſs all the powers
"and privileges of his predeceſſor."

May appoint a toll-keeper.

† *Sect.* 13. And it is further enacted, par. 62. "That the
"truſtees may agree with any perſon liable by tenure, inclo-
"ſure, or otherwiſe, to repair certain highways, which have
"become turnpike roads, for the repair thereof, in ſuch man-
"ner as they ſhall think fit; and may contribute ſo much,
"on their parts, to the repair thereof, out of the tolls ariſing
"from ſuch turnpike road: or out of the ſtatute duty belong-
"ing to the ſame, as they ſhall think juſt and reaſonable."

May agree with perſons liable to repair highways.

† *Sect.* 14. And it is further enacted, par. 66. "That the
"truſtees of every turnpike road in *England*, ſhall put up and
"afterwards continue upon every toll-gate, within their reſ-
"pective diſtricts, a table of all the tolls payable at every
"ſuch gate, diſtinguiſhing each toll and the different ſorts of
"carriages for which they are to be paid; and alſo a table of
"the weights allowed for each carriage, with the loading there-
"of, in ſummer and winter. And the ſaid truſtees ſhall from
"time to time exerciſe and inſpect every weighing engine on
"their reſpective roads, to ſee that the ſame, with their
"weight, are in ſuch good order as to weigh the carriages and
"loading with accuracy."

Shall hang up tables at toll-gates, &c.

† *Sect.* 15. It is alſo enacted, par. 41. "That the truſtees
"ſhall order the ſurveyor to erect mile ſtones or poſts (2)

Shall erect mile ſtones, direction poſts, &c.

(2) The truſtees are alſo ordered to erect direction poſts with proper inſcriptions thereon, where croſs roads meet, or where there are deep or dangerous floods, in the ſame manner and words as ſurveyors of highways, are to do by 13 Geo. 3. c. 78. ſ. 26. recited page 396.

"upon

Vide ante, p. 397.

"upon the turnpike roads under their care, with proper in-
"ſcriptions and figures thereon, denoting the names and di-
"rances of the principal towns and places on each reſpecti-
"road, and from time to time ſhall repair ſuch ſtones and poſt-
"and keep and continue legible the inſcriptions thereon re-
"pectively."

May erect weighing engines.

Sect. 16. Secondly as to weighing engines; the weig-
allowed, and additional toll. It is further enacted by the ſa-
ſtatute, par. 1. "That all truſtees appointed by any act of pa-
"liament for any turnpike road in England, or any five or mo-
"of them, at ſome publick meeting, if they ſhall think pro-
"per, at as many turnpike gates as they ſhall erect (3) for th-
"receiving toll; or upon any part of the road within the-
"reſpective juriſdictions, and at ſuch a diſtance as they ſha-
"think expedient, ſhall and may cauſe to be erected a crane-
"machine, or engine, proper for weighing of carts, waggon-
"or carriages, conveying of any goods or merchandize what-
"ever; and by writing ſigned by them, or any five or mo-
"of them, ſhall may order every ſuch carriage which ſha-
"paſs loaded through every ſuch gate or bar, to be weighe-
"with the loading thereof."

(3) But it hath been adjudged that toll gates ſhould not be erected in the middle of great towns, ſo as to obſtruct the neceſſary intercourſe. 1 Burr. 377.

But it is provided by ſect. 34. "That no toll gate ſha-
"be erected on the ſide of any turnpike road, unleſs ordere-
"by the truſtees, at a meeting, of which 21 days publi-
"notice ſhall have been given in writing affixed upon all th-
"toll gates, erected on ſuch roads, and alſo in ſome publi-
"news-paper circulated in that part of the country, ſpecify-
"ing the place where ſuch ſide gate is propoſed to be erected-
"and unleſs nine truſtees at leaſt (being a majority of thoſ-
"preſent) ſhall ſign the ſaid order at ſuch meeting; and tha-
"no perſon ſhall be liable to pay toll at any toll gate erected-
"or to be erected, acroſs or on the ſide of any turnpike road-
"or be ſubject to any penalty for any carriage, horſe or beaſt-
"which ſhall only croſs ſuch road, and ſhall not paſs above 10-
"yards thereon, except over ſome bridge erected at a conſide-
"rable expence by the truſtees of ſuch turnpike road."

The burthen with which carriages are allowed to paſs.

Sect. 17. And it is further enacted, by par. 1. "That the-
"truſtees ſhall take, over and above the tolls, a certain ſum-
"for every 1 1/2 lb. which every ſuch waggon or cart, together-
"with the loading ſhall weigh over and above the following-
"weights: To every four-wheel carriage, having felloes o-
"16 inches, 8 tons in ſummer, and 7 in winter.—To every-
"waggon or wain, having the axletrees thereof of ſuch-
"different lengths that the diſtance from wheel to wheel o-
"the nearer pair of the ſaid wheels be not more than 4-
"feet 2 inches, to be meaſured at the ground, and tha-
"the diſtance from wheel to wheel of the other pair-
"thereof

thereof be ſuch, that the fore and hind wheels of ſuch waggons and wains ſhall roll only one ſingle ſurface or path of 16 inches wide at the leaſt, on each ſide of the ſaid waggons or wains, and having the fellies thereof of the breadth of 9 inches from ſide to ſide at the bottom or ſole thereof, 6 tons 10 hundred in ſummer, and 6 tons in winter.—To every waggon or four-wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, 6 tons in ſummer, and 5 tons 10 hundred in winter.—To every cart having the fellies of the ſame dimenſions, 3 tons in ſummer, and 2 tons 15 hundred in winter.—To every waggon having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches, 4 tons 5 hundred in ſummer, and 3 tons 15 hundred in winter.—And to every ſuch waggon ſo conſtructed as to roll and actually rolling a ſurface of 11 inches, by the wheels thereof, 5 tons 10 hundred in ſummer, and 5 tons in winter.—To every cart, having fellies of the wheels of the ſame dimenſions, 2 tons 12 hundred in ſummer, and 2 tons 7 hundred in winter.—To every waggon, having the ſole or bottom of the fellies of the wheels of leſs breadth than 6 inches, 3 tons 10 hundred in ſummer, and 3 tons in winter.—And to every cart, having the fellies of the wheels of the ſame dimenſions, 1 ton 10 hundred in ſummer, and 1 ton 7 hundred in winter.—And for the ſeveral purpoſes aforeſaid, it ſhall be deemed ſummer from the 1 May to 31 October both inclusive, and winter from 1 Nov. to 30 April, both incluſive."

The additional toll to be paid for extra weight.

† *Sect.* 18. And by 14 Geo. 3. c. 82. "All truſtees or any five or more of them are impowered to take and receive over and above the tolls already granted, the following ſums of money: For every 112lb. which any waggon, cart, or carriage, together with the loading, ſhall weigh at any weighing engine, over and above the weights allowed as above, *viz.*—For the 1ſt, and 2 cwt. 3*d.* each.—For every cwt. ſuch over weight above 2 cwt. and not exceeding 5 cwt. 6*d.*—For every cwt. ſuch over weight above 5 cwt. and not exceeding 10 cwt. 2*s.* 6*d.*; for every cwt. of ſuch over weight above 10 cwt. and not exceeding 15 cwt. 5*s.*—For every cwt. of ſuch overweight above 15 cwt. 20*s.* The money ariſing from ſuch additional tolls to be applied to the roads where they are collected. But the truſtees within 10 miles of *London*, *Weſtminſter*, and *Southwark*, are empowered at their general or quarterly meetings to lower the additional tolls hereby directed to be taken as aforeſaid, as to them ſhall ſeem fit."

Truſtees, &c. may perſonally cauſe carriages to return to the weighing engine.

† *Sect.* 19. And it is further enacted by 13 Geo. 3. c. 84. 9. That any truſtee, creditor, clerk, treaſurer, or ſurveyor on ſuſpicion of fraud, may cauſe any carriage liable to be weighed which ſhall have paſſed through any toll-gate where ſuch

" ſuch weighing engine ſhall be erected, and ſhall not ha
" paſſed above 300 yards beyond ſuch toll-gate, to return
" ſuch weighing engine, and be then weighed with the lo
" ing which paſſed through ſuch gate in the preſence of
" ſaid truſtees, creditor, clerk, treaſurer, or ſurveyor, up
" requiring the driver thereof to drive back to ſuch weigh
" engine, and upon tendering him 1s. for ſo doing, wi
" ſhall be returned to the perſon paying the ſame, if the wei
" ſhall be found exceſſive."

† *Sect.* 20. And it is further enacted by 13 Geo. 3. c. 8
ſ. 2. "That every toll-gate keeper, where ſuch engine ſhall
" erected, ſhall weigh all ſuch carriages as he ſhall ſuſpect
" be loaden with greater weights, and receive the additio
" tolls, upon pain of forfeiting 5*l.*"

Truſtees ſhall make places for the carriages to turn.

And it is further enacted by par. 4. "That the truſt
" ſhall cauſe the ſurveyors to make convenient places
" turning ſuch carriages where ſuch weighing engine ſhall
" erected, within 300 yards of ſuch toll-gate, on each ſi
" thereof, if the ground will admit of the ſame. And a

The Names of the truſtees, &c. ſhall be affixed in the houſe.

" of the names of all the truſtees, creditors, the clerk, tr
" ſurer, and ſurveyor, ſhall be put up in the houſe wh
" ſuch weighing engine ſhall be placed, to be inſpected
" the owner or driver of every ſuch carriage: and if

Driver refuſing To return, 40s. &c.

" driver refuſe to return, he ſhall forfeit 40s. and any pe
" officer or other perſon being preſent upon ſuch refu
" may drive ſuch carriage back, in order to be weighed
" aforeſaid."

Carriages exempted from being weighed.

† *Sect.* 21. But it is enacted by 14 Geo. 3. c. 82. "T
" no waggon, cart, or carriage employed in huſbandry,
" carrying only manure or lime for the improvement of lan
" as hay, ſtraw, fodder, or corn unthreſhed, (excepting h
" or ſtraw carried for ſale), ſhall be weighed at any weigh
" engine."

Juſtices upon complaint made may order weighing engines to be erected where they think proper.

† *Sect.* 22. And it is provided by 13 Geo. 3. c. 84. ſ.
" That the juſtices at general quarter ſeſſions, upon compla
" by any juſtice or two creditors, or two truſtees, that ſu
" turnpike road is much damaged by exceſſive weights,
" that no engine hath been erected upon the ſame, may ſumm
" the clerk, ſurveyor, and treaſurer of ſuch turnpike ro
" to their next general quarter ſeſſions, to ſhew cauſe w
" the ſame ſhould not be erected at or near ſuch gates, up
" ſuch turnpike roads as ſhall be deſcribed in ſuch ſu
" mons; and if at ſuch ſubſequent ſeſſions the ſaid cle
" ſurveyor and treaſurer, ſome or one of them, ſhall
" appear, or appearing, ſhall not ſhew ſufficient cauſe aga
" the erecting thereof, the ſaid juſtices, at ſuch quarter ſ
" ſio

" ſions, may order one or more weighing engine at ſuch place; " a copy of which order ſhall be forthwith delivered to the clerk " of ſuch road; and the truſtees, at their next meeting after " their clerk ſhall have been ſerved with ſuch copy of the order, " may contract with proper perſons for the making and erecting " the ſame; and the treaſurer ſhall pay the expences thereof, " out of the money which ſhall then be, or next come into his " hands from the tolls ariſing upon ſuch turnpike road."

Where two or more roads meet, truſtees may erect one weighing engine to accommodate them.

† *Sect.* 23. It is alſo provided by the ſaid ſtatute, par. 8. "That " when turnpike roads meet at or near the ſame place, the truſ- " tees reſpectively ſhall fix upon ſome convenient place to erect a " weighing engine upon, which will accommodate all ſuch roads, " and proportion the expences thereof, and forfeitures at ſuch en- " gine amongſt all ſuch turnpike roads."

Truſtees not to make compoſition for tolls, unleſs waggons, &c. have the fellies of wheels of ſix inches broad.

† *Sect.* 24. And it is further enacted, par. 9. "That the " truſtees or their leſſee ſhall not make compoſition for tolls, in " reſpect of any carriage, or horſes, or beaſts of draught, draw- " ing the ſame, unleſs they have the fellies of the wheels of the " breadth of ſix inches, or more."

5l. penalty on unloading goods before coming to any gate or weighing engine.

† *Sect.* 25. And it is further enacted, par. 10. "That if " any perſon ſhall unload goods from any carriage, (except ſuch " carriages as are before excepted), before the ſame ſhall come " to any turnpike gate or weighing engine, or ſhall load upon " ſuch carriage, (except as aforeſaid), after the ſame ſhall have " paſſed any ſuch turnpike or weighing engine, any goods, taken " from any horſe, or other carriage, belonging to, or hired, or " borrowed by the ſame waggoner or carrier, in order to avoid " the payment of the additional duties, as aforeſaid; and if any " perſon ſhall ſo unload, in order to carry conſiderable quan- " tities of goods through any turnpike-gate, in one and the ſame " day, and thereby pay leſs toll at ſuch turnpike gate than " would have been paid if ſuch goods had not been ſo unloaden, " on conviction before one juſtice, upon the oath of one witneſs, " he ſhall forfeit five pounds. And each and every driver, not " being the owner, who ſhall ſo offend, on conviction, as afore- " ſaid, ſhall be committed to the houſe of correction for one " month."

Penalty for avoiding the weighing engine.

† *Sect.* 26. And it is further enacted by par. 11. "That if " the owner of any carriage, or the driver travelling on any turn- " pike road, where any toll gate or weighing engine is erected, " ſhall drive or turn out of the ſame into any other road, in or- " der to avoid being weighed, or paying toll, and ſhall after-

" wards proceed with ſuch carriage into, and on the ſame turn
" pike road, every ſuch owner or driver, convicted as aforeſaid
" ſhall forfeit, if he be the owner, any ſum not exceeding 5
" nor leſs than 20ſ.; and if he be the driver, and not the
" owner, not exceeding 50ſ. nor leſs than 10ſ. for every ſuch
" offence.

(4) N. B. By ſect. 67, of this act, two oxen or neat cattle are to be conſidered as equal to one horſe, in the ſame manner as by the highway act. Sect. 59. Vide ante, p. 411.

† *Sect.* 27. Thirdly, As to carriages, It is enacted, by 1 Geo. 3. *c.* 84. *ſ.* 13. " That no four wheeled carriage, having
" the bottom of the fellies nine inches broad, ſhall be drawn on
" any turnpike road with more than eight horſes. (4) Nor any
" two wheeled carriage, having wheels of the breadth aforeſaid
" with more then 5 horſes, And the horſes ſhall draw in pairs
" (except an odd horſe in any team, and except where the num-
" ber of horſes ſhall not exceed 4). And alſo, that no four
" wheeled carriage, (5) having the bottom of the fellies, of the
" breadth of 6 inches, ſhall be drawn in any turnpike road with
" more than 6 horſes; and that no two wheeled carriage, having
" wheels of the breadth laſt mentioned, ſhall be drawn with
" more than 4 horſes; and no four wheeled carriage, having
" fellies leſs than 6 inches, with more than 4 horſes; and no two
" wheeled carriage, having fellies leſs than 6 inches, with more
" than three horſes; and the owner ſhall forfeit 5*l.* and the
" driver, not being the owner, 20ſ. for every offence, to any per-
" ſon who ſhall ſue for the ſame."

(5) By ſect. 98. carriages to have names and deſcriptions on them, in the ſame manner as directed by the highway act. Sect. 60. Ante, p. 412.

Vide Burrow 2258.

† *Sect.* 28. Provided, by par. 14. " That all carriages mov-
" ing upon rollers of 16 inches on each ſide thereof, with flat ſur-
" faces, may be drawn with any number of horſes, or other cat-
" tle."

Rollers with flat ſurfaces may be drawn with any number of horſes.

And by 14 Geo. 3. c. 81. ſ. 5. all ſuch carriages ſhall only pay half the tolls directed by this act.

Proſecutions not to be commenced, unleſs information be laid within three days after the offence is committed.

† *Sect.* 29. Provided always, by par. 15. " That no proſe-
" cution ſhall be commenced before a juſtice by information, for
" any forfeiture incurred by the owner or driver having a greater
" number of horſes, unleſs ſuch information be laid within three
" days after the offence committed; and no action, unleſs com-
" menced within one calendar month; and neither ſuch informa-
" tion or action, unleſs notice be given by the informer to the
" driver on the day the offence ſhall be committed, of an inten-
" tion to complain of ſuch offence; and if the offender lives ſo
" remote as to make it inconvenient to ſummon him, the juſtice
" may diſmiſs the complaint, and leave the informer to his reme-
" dy by action at law."

Penalty for taking off horſes, &c.

† *Sect.* 30. And it is further enacted, par. 17. " That if
" any perſon ſhall take off any horſe, or other beaſt of draught,
" from any carriage, or ſhall alter the diſtance of the wheels
before-

"before the same shall come to any of the turnpikes, with intent to avoid any toll forfeiture or penalty for drawing with a greater number of horses or beast of draught, than is hereby allowed on conviction before one justice, upon the oath of one witness, shall forfeit 5*l.*"

† *Sect.* 31. And it is further enacted, par. 18. "That if it shall appear to the trustees, or any seven of them, at any of their publick meetings, by the oath of one witness, experienced in levelling, that any part of the rise of any hill shall be more than 4 inches in a yard, they may allow such number of horses as they shall judge necessary, not exceeding 10, for waggons with 9 inch wheels, nor 6, for carts with 9 inch wheels, and not exceeding 7, for waggons with 6 inch wheels, nor 5, for carts with 6 inch wheels; and not exceeding 5, for waggons with wheels of less breadth than 6 inches, nor 4, for carts with wheels of less breadth than 6 inches. And in case it shall appear to the said trustees, in manner aforesaid, that the whole rise of any hill taken together shall be more than 4 inches in a yard upon an average, the said trustees, or any seven of them, may allow such number of horses as they shall think fit to be used in such waggons and carts respectively, for the purpose only of drawing the same up such hill or hills, as aforesaid, the length and extent of such hill or hills to be specified in such order of allowance, and the termination at each end thereof to be marked by a post or stone, to be erected at such respective boundaries; and the said order of allowance shall be certified by the said trustees, or their clerk, to the next general quarter sessions, of the limit within which such hill or hills shall respectively be situated: and if the facts shall be proved upon the oath of one witness to the satisfaction of the bench, the said order shall be confirmed and filed, or otherwise vacated and quashed: and from and after such confirmation and filing, no person shall be liable to any penalty or forfeiture for using such number of horses as shall be so allowed in drawing any waggon or cart up such hill or hills respectively; and the said justices, as any subsequent quarter sessions of the peace, may reconsider the said order of allowance, and to discharge the same, if they think fit."

They may allow such number of horses as they think fit, up hills rising more than 4 inches in a yard, to be specified in the order of allowance.

But a justice of the peace, or any court of justice, may stop all proceedings for these penalties, if it appears by one witness that the additional horses were necessary by reason of deep snow, &c. as by 13 Geo. 3. c. 78. s. 59. recited ante, p. 411.

† *Sect.* 32. And it is further enacted, par. 20. "That no carriage, having the bottom of the fellies of less breadth than 9 inches, shall pass upon any turnpike road drawn by horses in pairs, other than, and except such carriages, having the fellies of 6 inches, as shall be authorised to be drawn in any other manner by the order of trustees, within their district, made at a publick meeting, consisting of seven trustees or

"more, which order the ſaid truſtees may revoke at any ſubſe-
"quent meeting, and afterwards make a new one fixed in writ-
"ing upon every toll gate within ſuch diſtrict, and except car-
"riages drawn by two horſes only."

† *Sect.* 33. And it is alſo enacted, par. 59. "That the juſ-
"tices of the peace for Wales, at their general quarter ſeſſions,
"to be held in the week after Michaelmas, may licenſe an in-
"creaſe of the number of horſes to be employed in drawing car-
"riages on turnpike roads within their reſpective juriſdictions,
"over and above the number herein before limited, if the ſtate
"of the roads make ſuch an increaſe neceſſary, which order
"they may revoke, alter or vary at any ſubſequent Michaelmas
"ſeſſion."

For the manner in which they are to be marked vide ante. p. 412.

† *Sect.* 34. And it is further enacted, par. 21. "That in
"caſe any perſon ſhall drive any carriage not being marked ac-
"cording to the directions of this act, or drawn by more than
"the number of horſes, or beaſts of draught, hereby reſpective-
"ly authoriſed, any conſtable, tythingman, ſurveyor, or other
"perſon, may apprehend and take ſuch perſon before a juſtice
"where the offence ſhall be; and, on conviction by confeſſion,
"or the oath of one witneſs, ſhall forfeit not exceeding 5*l.* nor
"leſs than 10*s.*"

† *Sect.* 35. And it is further enacted, par. 2. "That the
"truſtees appointed by any act of parliament for repairing par-
"ticular roads, or any five or more, within their reſpective di-
"ſtricts, at the firſt meeting after this act, do mitigate, leſſen,
"and reduce the high and extraordinary tolls impoſed by ſuch
"certain particular acts, to an equality with the tolls and duties
"impoſed by this act reſpectively."

Waggons, &c. moving on rollers of the breadth of 16 inches on each ſide, with flat ſurfaces, to paſs toll free for one year, and then after paying one half of the toll.

† *Sect.* 36. Fourthly. As to exemptions from tolls: "It is
"enacted, by 13 Geo. 3. c. 84. ſ. 26. and by 14 Geo. 3. c. 82.
"ſ. 5. That all carriages, moving upon rollers, of the breadth
"of 16 inches on each ſide, with flat ſurfaces, ſhall paſs upon
"any turnpike road, through any tollgate or bar, toll-free, upon
"paying only ſo much of the tolls and duties as ſhall not ex-
"ceed one-half of the full toll or duty payable by this or any
"turnpike act, for all waggons, wains, or carts, having the fel-
"lies of the wheels of the breadth or gauge of 6 inches from
"ſide to ſide, or for the horſes or beaſt of draught drawing the
"ſame, and not rolling a ſurface of 16 inches on each ſide;
"and that no more than half toll ſhall be paid in reſpect of wag-
"gons having the fellies of the wheels thereof of the breadth of
"9 inches, and rolling a ſurface of 16 inches on each ſide."

† *Sect.*

† *Sect.* 37. Provided alſo, by 13 Geo. 3. c. 84. par. 27. "That nothing therein contained ſhall extend to any chaiſe-marine, coach, landau, berlin, chariot, chaiſe, chair, calaſh, or hearſe, or to the carriage of ſuch ammunition or artillery as ſhall be for his majeſty's ſervice, or to any cart or carriage drawn by one horſe, or two oxen, and no more; or to any carriage, having the ſole or bottom of the fellies of the wheels thereof of the breadth of 9 inches, which ſhall be laden with one block of ſtone, one piece of marble, one cable rope, one piece of metal, or one piece of timber." Carriages to which the act does not extend, Vide 4 Burrows 2260.

† *Sect.* 38. Provided alſo, by par. 28. "That if any perſon ſhall take the benefit of any exemptions, under any act for the repair of any turnpike road, in any fraudulent or colluſive manner whatſoever, he ſhall forfeit not exceeding 5*l.* nor leſs than 40*s.* for every ſuch offence." Penalty on perſons fraudulently taking the benefit of any exemption, is not to exceed 5*l.*

† *Sect.* 39. And it is enacted by 18 Geo. 3. c. 63. "That no toll ſhall be taken for any horſes belonging to officers or ſoldiers upon their march, or upon duty, or for any horſes, cattle, or carriages employed in carrying their arms or baggage, or any ſick, wounded, or diſabled officers or ſoldiers; and no carriages ſo employed ſhall be weighed, or the owner or driver liable to any forfeiture for carrying greater weight than allowed by law." Baggage waggons exempted.

† *Sect.* 40. And it is further enacted by ſaid ſtatute 13 Geo. 3. c. 84. ſ. 24. "That no perſon ſhall take exemption from toll, in reſpect of any carriage, or horſe drawing the ſame, and carrying any particular kind of goods, unleſs ſuch carriages have the ſole of the bottom of the fellies of the breadth of 6 inches, or upwards, (other than and except carts and carriages employed in carrying corn or grain in the ſtraw, hay, ſtraw, fodder, dung, lime for the improvement of land, or other manure, or any implements of huſbandry only); but that the uſual toll, together with the additional tolls hereby required to be taken for carriages having the bottom of the fellies of leſs breadth than 6 inches, as aforeſaid, and for and in reſpect of horſes or beaſts of draught, drawing the ſame, (except as before excepted), ſhall be paid as if no exemption, or leſs toll, had been allowed, and as fully as all other carriages, and horſes drawing the ſame." No exemption from toll by former acts to be claimed by any perſon, unleſs where carriages with ſix inch fellies are uſed. Carts, &c. employed in huſbandry excepted.

† *Sect.* 41. Provided, par. 25. "That no perſon be allowed to take the benefit of any ſuch exemptions, or to have the privilege herein-before given of compounding in reſpect of any carriage having the fellies of the wheels thereof of the breadth of 6 inches, or upwards, unleſs the fellies and the tire of ſuch fellies ſhall lie flat.—And by 16 No benefit to be taken of exemptions, unleſs the fellies lie flat.

"Geo.

" Geo. 3. c. 39. ſ. 2. the fellies or tire whereof ſhall not devi-
" ate more than one inch from a flat ſurface ſhall be taken to
" be flat, according to the intent and meaning of this act."

† *Sect.* 42. And it is further enacted by 13 Geo. 3. c. 84.
ſ. 60. " That no toll ſhall be collected for carriages ſolely em-
" ployed in carrying materials for the repair of any turnpike road
" or public highway, or for going to or returning from ſuch em-
" ployment."

The mail coaches exempted from toll.

† *Sect.* 43. And it is further enacted by 25 Geo. 3. c. 57.
" That all carriages of what deſcription ſoever, or horſes which
" ſhall be employed in conveying from one part of this kingdom
" to another, the mail or packet which ſhall be made up under
" the authority and direction of the poſt-maſter general, or his
" deputies, ſhall be exempted, freed, and diſcharged from the
" payment of any tolls whatſoever, that ſhall or may be deman-
" ded for the paſſage of carriages or horſes through any turnpike,
" toll-gate, or bar, at which any toll is collected by any act or
" acts of parliament now in force; and all turnpike keepers or
" toll collectors are hereby directed and required to permit ſuch
" carriages and horſes to paſs through all and every turnpike,
" toll-gate, or bar, without demanding any toll or duty for ſo
" doing."

All ſtatute duty to be performed in the pariſh, &c, where it ariſes.

† *Sect.* 44. Fifthly. As to ſtatute duty, it is enacted by 13
Geo. 3. c. 84. ſ. 32. " That ſurveyors ſhall cauſe the ſtatute-
" duty required by the reſpective turnpike acts, and the compo-
" ſitions ariſing from the ſame, to be performed, laid out, and
" expended, upon the turnpike road lying within the pariſh,
" townſhip, or place, from which ſuch duty ſhall be required,
" and not elſewhere, and ſhall forfeit 40*s.* for every miſapplica-
" tion thereof; and that where there are two or more turnpike
If more turnpike roads than are in the ſame pariſh, and the ſtatute-duty required to them exceeds three days, the juſtices may adjuſt the proportions.
" roads under ſeveral acts of parliament within the ſame pariſh,
" townſhip, or place, and the ſtatute-duty ſhall exceed three
" days duty in the whole; two juſtices ſhall at ſome ſpecial ſeſſi-
" ons, adjuſt the ſtatute-duty betwixt ſuch turnpike roads and the
" other highways in ſuch pariſh, townſhip, or place, the ſaid
" juſtices previouſly ſummoning the clerks and ſurveyors of ſuch
" turnpike roads, and likewiſe the ſurveyors of the highways, who
" are hereby reſpectively required to attend ſuch ſummons."

† *Sect.* 45. Sixthly. As to materials for repairs, it is enac-
ted by par. 61. " That no ſurveyor ſhall gather any ſtones for
" the uſe of the highways, upon or from the common fields or
" incloſed lands or grounds of any perſon, without the con-
" ſent of the occupiers of ſuch lands or grounds, or a licence
" from a juſtice of the limit where ſuch lands or grounds lie

" for

"for that purpoſe after having ſummoned ſuch occupier to come "before him and heard his reaſons, if he ſhall appear and give "any for refuſing his conſent."

† *Sect.* 46. And it is provided par. 65. "That ſatisfaction "ſhall be made by the truſtees of turnpike roads for all ſuch "materials as are got in ſeveral or incloſed lands (6) or grounds "in the ſame manner as ſatisfaction is to be made reſpecting ma-"terials for the highways by virtue of 13 Geo. 3. c. 78. ſ. 29."

(6) Vide the caſe of Rex. v. Manning. 1 Burrow 377 to 383. Vide the clauſe at length. Ante p. 398. ſect. 41.

† *Sect.* 47. And by par. 36. "The ſurveyor of turnpike "roads with the approbation of the truſtees, may, under the "like circumſtances contract for the getting and carrying mate-"rials and ſhall be liable to the ſame penalties for having any "ſhare in ſuch contract, as the ſurveyor of highways may do by "13 Geo. 3. c. 78. ſ. 50, recited at large in the preceding chap-"ter, page 403, ſection 45.

† *Sect.* 48. Seventhly. As to nuſances it is enacted by par. 37. "That if the ſurveyor or other perſon having the care of "any turnpike road, ſhall knowingly ſuffer to be or remain, "for four days in any part thereof, within ten feet on either ſide "of the middle of ſuch road any poſt, heaps of ſtones, rubbiſh "or earth, ſet up or raiſed on or above the ſurface of the ſaid "road, by which the paſſage thereof ſhall or may be obſtructed, "impeded, confined or ſtraitened, (other than and except poſts, "blocks, ſtones, or banks of earth fixed in the ground, or raiſed "for ſecuring horſe or foot roads or paſſages for water, and all "direction poſts and ſtones) ſuch ſurveyor or other perſon ſhall "forfeit 40*s.*"

Truſtees may direct proſecution for nuſances.

N. B. For nuſances by perſons making incroachments within 30 feet of the centre of the road, or ploughing within 15 feet thereof, by which they incur the penalty of 40s. The ſame clauſe is enacted by the 38th ſection of this act as is enacted by the 64th ſection of the highway act for which vide Ante p. 409. ſection 63.

† *Sect.* 49. Eighthly. As to ſubſcribers and mortgagees, it is enacted by par. 35. "That if any perſon ſhall agree to ad-"vance any ſum of money, to be employed in the making or re-"pairing any turnpike road, or highway intended to be made "turnpike, and ſhall ſubſcribe his, her, or their name or names "to any writing for that purpoſe; every ſuch perſon ſhall be "liable to pay every ſum or ſums of money ſo ſubſcribed, ac-"cording to the purport of ſuch writing; and in default of pay-"ment thereof within twenty-one days after the ſame ſhall be-"come payable, according to the purport of ſuch writing; and "ſhall be demanded by the perſon to whom the ſame is made "payable by ſuch writing; or if no perſon be named therein for "that purpoſe by the treaſurer, every ſuch treaſurer or other

Subſcribers and mortgagees.

"perſon

" perſon may ſue for and recover the ſame in any of his maje-
" ty's courts of record by action of debt, &c."

Mortgagees ſhall account for the monies they receive for tools.

† *Sect.* 50. And it is further enacted by the ſaid ſtat. pa
52. " That every mortgagee that hath taken or been in poſſeſſi
" on of any toll, gate, or bar ſet up or erected on any turnpik
" road, or of any lands or tenements, the rents and profits where
" of are appropriated to the repair of any part of any turnpik
" road ſhall within 14 days after he, ſhe, or they ſhall have re
" ceived notice in writing from the truſtees of ſuch turnpike roa
" or any 5 of them, render upon oath to be adminiſtered and ta
" ken by and before one juſtice or any one truſtee an exact ac
" count in writing, to ſuch truſtees, or to any perſon appointe
" by them or any 5 of them to be named in ſuch notice, of al
" monies received by ſuch mortgagee or by any other perſon fo
" their uſe and benefit or by their authority, at ſuch toll, ga
" or bar or otherwiſe, and of what they have expended in keep
" ing or repairing the ſame; and in caſe they ſhall neglect t
" render ſuch account when required, in the manner herein di
" rected, they ſhall ſeverally forfeit and pay to the ſaid truſtees
" 10*l.* to be recovered by the ſaid truſtees, or any 5 or more o
" them, or by the treaſurer or clerk to the ſaid truſtees in a ſum
" mary manner before one juſtice to be applied to the uſe of th
" reſpective road whereupon ſuch toll, gate or bar ſhall be pla
" ced.

Penalty for holding over.

† *Sect.* 51. And it is further enacted by par. 53. " That if
" any ſuch mortgagee, ſhall keep poſſeſſion of any toll, gate or
" bar, or receive the tolls and duty thereof or of any ſuch rents
" or profits as aforeſaid after ſuch mortgagee ſhall have received
" the full ſum of money due on his mortgage and the intereſt
" thereof with coſts, ſuch mortgagee ſhall forfeit to the truſ-
" tees double the ſum of money he ſhall have received over and
" above the ſum due as aforeſaid, with treble coſts of ſuit;
" to be recovered by the ſaid truſtees, or by the treaſurer or
" clerk to ſuch truſtees by action of debt, &c. in any of his
" majeſty's courts of record; and applied as above men-
" tioned."

If the gate-keeper, who is diſcharged, refuſes to deliver up poſſeſſion of the houſe, &c. the juſtices may, by warrant, order him to be removed, with his goods.

† *Sect.* 52. Ninthly. As to officers in general, it is enacted, par. 54. " That if any toll-gatherer or gate-keeper, who
" ſhall be diſcharged by the truſtees, ſhall refuſe to deliver up
" the poſſeſſion of the houſe, &c. within two days after notice
" of his diſcharge; or if the wife or family of any ſuch, who
" ſhall die, ſhall refuſe within 4 days after ſuch new appoint-
" ment ſhall be made, as aforeſaid; any juſtice by warrant ſhall
" order the conſtable, or other peace officer, to remove the per-
" ſons, together with their goods, out of ſuch houſe, and to put
" the new-appointed officer into the poſſeſſion thereof."

† *Sect.*

† *Sect.* 53. And it is further enacted, par. 55. "That the gate-keeper or toll gatherer, and every ſurveyor ſhall, when required, by notice, in writing, from any five of the truſtees render upon oath, before one juſtice or truſtee a true account in writing, of all monies received on account of ſuch turnpike road, not before accounted for, under the penalty of 5*l.* to be recovered in a ſummary manner before any one juſtice, and applied to the uſe of the reſpective road on which ſuch toll-gate ſhall be placed."

Gate-keepers and ſurveyors to account upon oath, when required by the truſtees, or forfeit 5l.

† *Sect.* 54. And be it further enacted, par. 56. "That no gate-keeper or other perſon renting the tolls and reſiding in any toll-houſe, ſhall be removeable by any juſtices, in purſuance of any laws for the regulation of the poor, unleſs he become chargeable to the pariſh; and that no ſuch gate-keeper, or perſon as aforeſaid, ſhall thereby gain a ſettlement; and that no tolls nor any toll-houſe, nor any perſon in reſpect of ſuch tolls or toll-houſe ſhall be aſſeſſed to the poors rate, or any other public or parochial levy whatſoever."

No gate-keeper to be removed as a pauper, unleſs actually chargeable, &c. nor ſhall gain a ſettlement, nor be aſſeſſed, &c.

† *Sect.* 55. And it is further enacted, par. 57. "That if any toll-gatherer or gate-keeper ſhall ſuffer any carriage to paſs through any toll-gate or bar with any greater number of horſes, or beaſts of draught, or with any carriage conſtructed or drawn in any other manner than is before directed, or without ſuch names and deſcriptions painted thereon as are hereby directed, and ſhall not within one week proceed for the recovery of the forfeiture or penalty in the manner directed by this act, he ſhall forfeit 40*s.*"

Gate-keepers permitting horſes, or carriages otherwiſe than allowed by the act, or without proper inſcriptions, &c. forfeit 40s.

† *Sect.* 56. And it is further enacted, par. 45. "That all officers, appointed by any act for the repair of turnpike roads, their executors or adminiſtrators, ſhall, within 10 days after notice in writing by the truſtees, or any 5 or more of them deliver up all books, accounts, papers, or writings whatſoever, relative to the execution of ſuch reſpective offices on pain of forfeiting 20*l.*

Clerks, treaſurers, &c. to deliver up their accounts.

† *Sect.* 57. And it is further enacted, par. 65. "That every treaſurer and ſurveyor ſhall, within one month after his appointment, give a bond to the truſtees, with ſurety, in ſuch penalty as the ſaid truſtees ſhall direct, for the paying and accounting for all money in his hands, or which he ſhall afterwards receive, as treaſurer or ſurveyor, according to the directions of the ſeveral acts of parliament reſpecting ſuch turnpike road, which bond ſhall be wrote upon paper without any ſtamp thereupon."—But by 23 Geo. 3. c. 18. ſ. 15. this exemption from ſtamps is repealed.

Treaſurers and ſurveyors ſhall give bond with ſurety to the truſtees, for the money in their hands.

† *Sect.*

Vide ſect. 27. N. B. Upon what evidence convictions are to be made, and who are good witneſſes. Vide a ſimilar clauſe 13 Geo. 3. ſ. 77. & 78, Ante, p. 414.

† *Sect.* 58. It is alſo enacted, p. 73. "That every conſtab "headborough, or tythingman, refuſing or neglecting to p "this act into execution, or to account for and deliver any fo "feiture or penalty, according to the directions of this act, a "every ſurveyor, toll gatherer, and all other perſons employ "for the repairing roads, as ſhall receive ſalaries or reward "who ſhall wilfully neglect for one week after the offence co "mitted to lay ſuch information upon oath before a juſtice for t "limit wherein ſuch offence was committed, ſhall, upon due i "formation upon oath before one juſtice, forfeit 10*l.*"

† *Sect.* 59. And it is further provided, par. 74. "Th "any juſtice may act in the execution of this act, notwit "ſtanding he may be a creditor or a truſtee for repairing "amending the roads on which any offence contrary to this a "was committed."

† *Sect.* 60. And it is further enacted, par. 75. "That wh "ever ſhall reſiſt or make forcible oppoſition to any perſon em "ployed in the due execution of this act, or any particular a "made for amending any particular highway, or ſhall aſſau "any collector in the execution of his office, or ſhall paſs throug "any turnpike gate, rail, or chain, or other fence, ſet up b "authority of parliament, without paying the toll appointed t "be paid at ſuch gate or other fence, or make reſcue of cattl "or any other goods diſtrained by virtue of this act, or if an "conſtable, headborough, or tythingman, ſhall refuſe or ne "glect to execute any warrant granted by any juſtice, purſuant t "the directions of this act, he ſhall, on conviction as above, for "feit not exceeding 10*l.* nor leſs than 40*s.* in the manner directe "by 13 Geo. 3. c. 78. ſ. 72."

Perſons liable to repair old highways turned or ſtopped up, ſhall be liable to repair a part of the new highway equal to the burthen of the old one.

† *Sect.* 61. Tenthly, As to the repair of altered turnpik roads, it is recited by the ſaid ſtatute, par 63. "And whereas "parts of highways or turnpike roads have been, or may be, di "verted and turned by legal authority, to make the ſame neare "or more commodious to the publick; and doubts have ariſen "whether the inhabitants, or any particular perſon, is liable to re "pair the old highway or road, ſo deviated from by ſtatute duty "tenure, or otherwiſe, ought to repair, or contribute to the repai "of the whole, or ſome, and what part or proportion of ſuch new "highway or road. For obviating which doubts, and preventing "diſputes about the ſame, be it enacted, par. 63. "That the in "habitants of every pariſh, townſhip, or place, and perſons liable "as aforeſaid, to the repair of any ſuch old highway or road, ſhall "reſpectively be and continue in the ſame manner liable to the "repair

repair of such new highway or road, or so much thereof as shall be equal to the burden and expence which he shall be exonerated, by turning the same, as aforesaid; and that if the parties cannot agree, the same shall be viewed by two justices, and settled, adjusted, and determined by them; and from and after such determination of the justices, the inhabitants, or the person liable to repair, shall bear all charges and expences of indictments and prosecution for not repairing the same: and if it shall be found more convenient to fix a gross sum, or an annual sum, to be paid by any such inhabitants or person, instead of fixing the part or proportion of such new highway or road, to be repaired by him, the said justices may, with the consent of such person, and of the inhabitants interested therein, obtained at a vestry or publick meeting held for that purpose, and also of the trustees at a publick meeting if it be turnpike road, order and direct the same accordingly; which order shall be, and for ever after continue, binding to all persons whomsoever."

And if the parties cannot agree, it shall be viewed and settled by two justices of the peace.

A gross or annual sum may be paid, if the parties agree thereto.

† *Sect.* 62. And it is further enacted, par. 33. "That when the inhabitants shall be indicted or presented for not repairing any highway, being turnpike road, and the court shall impose a fine, the same shall be proportioned, with the costs and charges, between the inhabitants of the parish, townships, or place, and the trustees of such turnpike road; and the court shall order the treasurer to pay the sum so proportioned, if it shall appear that the same may be paid without endangering the security of the creditors who have advanced their money upon the tolls to be raised thereupon.

Where turnpike roads are indicted, the court may proportion the fine and costs between the inhabitants and the trustees.

Without endangering the security of the creditors.

† *Sect.* 63. Eleventhly, How far the powers of the highway act may be adopted, it is recited by the said statute, par. 70. That whereas the powers given by several turnpike acts are ineffectual for the purposes of digging, providing, and carrying materials, for the use of the turnpike roads therein described, and also for the purposes of enlarging, diverting, and turning such turnpike roads, and stopping up, selling, and disposing of the old roads so to be diverted and turned; and also for the making, opening, and cleansing of ditches and drains, and the cutting and pruning of hedges and trees; and also for the calling forth and compelling the performance of the statute duty which shall belong to such turnpike roads: and whereas more ample powers having been given in the acts for highways in general, (which highways comprehend and include turnpike roads); be it therefore enacted, That the surveyors shall, with the approbation of the trustees of every turnpike road, apply any part of the tolls and statute duty in the execution of all act or acts of parliament, for the amendment and preservation "of

When the powers for providing materials, enlarging and turning turnpike roads, making drains, pruning hedges and trees, and calling forth the statute duty, are ineffectual.

And where more ample powers for these purposes are given by the highway act.

The surveyor of turnpike roads, with the approbation of the trustees, may

execute and enforce these powers upon

" of the highways, and ſhall execute the ſame upon turnp
" roads reſpectively, for the ſeveral purpoſes aforeſaid."

and for the benefit of the turnpike roads, upon the terms, and under the reſtrictions in highway act.

† *Sect.* 64. Twelfthly, As to the modes of proceeding, i enacted, by par. 72. in the words of the highway act, ſect,

(1) Ante, p. 413.

(1) " That the forms of proceeding contained in the ſched
" ſhall be uſed, and no objection or advantage ſhall be taken
" want of form.—And by par. 74. the evidence upon which c
" victions are are to be made is the ſame as by the highway

(2) Ante, p. 414, ſect. 76.

" ſect. 77, and 78. (2)—And by par. 7. the manner in wh
" penalties and forfeitures are to be levied and recovered

(3) Ante, p. 413, ſect. 69.

" diſtreſs, is the ſame preciſely as the highway act, ſect. 73.
" —By par. 77. the time for iſſuing the warrant is the ſame

(4) Ante, p. 414.

" by the highway act, ſect. 74. (4)—By par. 78. and 79.
" application of the forfeitures are to be applied to the turnp
" roads, and how forfeitures under 40*s.* may be recovered,
" the ſame as, by the highway act, ſect. 75. excepting that
" turnpike act gives full coſts, and the highway act double co

(5) Ante, p. 417.

" &c. (5)—The ſame notice to be given, as, by the highw

(6) Ante, p. 417, ſect. 75.

" act, ſect. 76. (6)—By par. 80. the party grieved may reco
" ſatisfaction, as, by highway act, ſect. 79. (7)—By par.

(7) Ibid. ſect. 76.

" tender of amends the ſame as ſect. 80. (8)—By par. 82.

(8) Ante, p. 419, ſect. 82.

" 83. the appeal the ſame as, by highway act, ſect. 81. (9)
" By par 85. the limitation, mode of pleading, and coſts the ſa

(9) Ante, p. 420.

" as, by highway act, ſect. 82."

Informations for penalties, in order to favour the offender, are deemed fraudulent and void.

† *Sect.* 65. And it is further enacted by the ſaid ſtatute Geo. 3. c. 84. par. 48. That whereas fraudulent contrivances m be practiſed by offenders, their friends, and others to evade t juſt recovery of forfeitures and penalties, by ſetting up colour ble proſecutions, be it enacted, " That juſtices, where any i
" formation or conviction ſhall be ſet up by way of defence,
" to defeat any information or proceeding on any forfeiture
" penalty, inflicted as aforeſaid, to examine into the real merits
" and if it ſhall appear that the ſame was done to favour t
" offender, ſuch information or conviction ſhall be deemed to
" fraudulent, and null and void; and every ſuch juſtice or juſtic
" ſhall determine and convict, as if no information or convictio
" had been made, proſecuted, or obtained."

CHA

CHAPTER THE SEVENTY-SEVENTH

NUSANCES RELATING TO BRIDGES.

ND now I am in the ſecond place to conſider nuſances relating to bridges in particular; for the better underſtanding whereof I ſhall examine: How publick bridges are to be aired by the common law. And how by the ſtatute.

By the great charter 9 H. 3. c. 15. No town nor freeman ſhall be diſtrained to make

ges nor banks, but ſuch as of old time and of right have been accuſtomed. See alſo 2 . 701. 1 Bur. 267.

s to the firſt point, I ſhall conſider, Firſt, In what manner, by whom ſuch bridges are to be repaired by common law. ndly, In what manner perſons bound to ſuch repairs are to proceeded againſt.

ct. 1. As to the firſt of theſe particulars it ſeemeth to be r, That thoſe who are bound to repair ſuch bridges, muſt e them of ſuch height and ſtrength, as ſhall be anſwerable he courſe of the water, whether it continue in the old chan- or make a new one; and that they are not puniſhable as paſſers for entering on an adjoining land, for ſuch purpoſe, for laying thereon the materials requiſite for ſuch repairs. o it ſeemeth to be clearly (a) ſettled, That of common right charge of repairing all common bridges, lies upon the coun- wherein they are, unleſs part thereof be within a franchiſe; which caſe it is ſaid, That ſo much as is within the franchiſe, l be repaired by thoſe of the franchiſe.

43 Aſſize p. 43. Dalton c. 14.

(a) 2 Inſt. 701. Summary 143. C. Car. 365. 6 Modern 337. Salk. 358, 359.

ct. 2. Alſo it ſeemeth to be (b) certain, That ſuch charge be caſt upon a corporation aggregate, either in reſpect a ſpecial tenure of certain lands, or in reſpect of a ſpecial ſcription, and that it may be caſt upon any other perſons by reaſon of ſuch a ſpecial tenure as hath been ſhewn e at large under the ſecond general head of the prece- chapter. But it is (c) ſaid, That a man ſhall not be nd to repair a new bridge built by himſelf, for the common

(b) 2 Inſt. 700. 701. Summary 143. Dalton c. 14. Far. 54, 55.

(c) 2 Inſt. 701. 6 Modern 307. Salkeld 359. C. Car. 365. 5 Burr. 2594.

1) Therefore a tenant at will of a houſe which adjoins to a common bridge, although s not bound as between landlord and tenant to repair the houſe, yet if it become dan- uſly ruinous to the neceſſary intercourſe of the bridge, as tenant at will only, he is nd, *by reaſon of his poſſeſſion*, to repair it, ſo far as to prevent the public being prejudic- Lord Raym. 856.

good:

good: but that the county ſhall be bound to repair it, if it come of publick convenience. (2)

(2) Therefore where a particular diſtrict rebuilt a foot-bridge over a more conve part of the ſtream, and converted it into a bridge for horſes, carts, and carriages; a diſtrict was not bound by cuſtom to build or repair ſuch a bridge, but a foot-bridge and as they built a quite different bridge, in a different place, which proved of com publick utility to the county, the Court were unanimous, that the county, and no diſtrict, were bound to repair it. 5 Burr. 2594. 2 Black. 685.

Sect. 3. As to the ſecond particular, *viz.* In what ma perſons bound to ſuch repairs, are to be proceeded againſt ſeemeth to be clear, (a) That any particular inhabitant or inh tants of a county, or tenant or tenants of land charged to the pairs of ſuch a bridge, may be made defendants to an indict for not repairing it, and be liable to pay the whole fine aſſe by the court for the default of ſuch repairs, and ſhall be to their remedy at law for a contribution from thoſe who bound to bear a proportionable ſhare in the charge, for the ceſſity of the caſe requires the greateſt expedition in caſes of nature.

(a) 1 Jon. 273. Popham 192. 6 Modern 307. Salkeld 358. 12 Modern 198, 409. Ld. Raym. 725, 792, 804, 856, 858, 1169, 1175, 1249. 11 Modern 56. F. N. B. 225. Regiſter 268. 2 Inſt. 700. Hard. 131.

Sect. 4. Alſo it hath been (b) reſolved, That it is not ficient for the defendants to an indictment for not repairing bridge, to excuſe themſelves by ſhewing either that they are bound to repair the whole, or any part of the bridge, with ſhewing what other perſon is bound to repair the ſame; and ſaid that in ſuch caſe the whole charge ſhall be laid upon t defendants, by reaſon of their ill plea.

(b) 2 Lev. 112. Popham 102. 48 Aſſize 37. 3 Modern 120. 43 Aſſize 37. B. Preſentment, 22, and 29.

Sect. 5. It is ſaid, That where ſuch defendants plead, *A. B.* ought to repair the bridge mentioned in the indictment, take a traverſe to the charge againſt themſelves, the attorney neral in this ſpecial caſe may take a traverſe upon a traverſe, inſiſt that the defendants are bound to the repairs, and trav the charge alledged againſt *A. B.* and that an iſſue ought to taken on ſuch ſecond traverſe; and that the attorney general afterwards ſurmiſe, that the defendants are bound to repa and that the whole matter ſhall be tried by an indifferent j &c. (3

See 1 Sid. 140. 2 Levinz 112.

(3) But the indictment ought to ſhew what ſort of bridge it is, whether for carts carriages, or for horſes, or foot-men only. Ld. Raym. 1175. And if the duty to re ariſes by reaſon of the tenure of certain lands, the indictment muſt ſhew where t lands lie. 2 Hale 181. And for the form of an indictment, vide 1 Burn 281.

Sect. 6. It ſeems that no inhabitant of a county ough be a juror for the trial of an iſſue, whether the county be bo to ſuch repairs or not, but it is ſaid that he may be a good w neſs. (4)

6 Modern 307. Burrows 859.

(4) The ſame objection may lie againſt the juſtices where they are all intereſted. which caſe the trial ſhall be in the next county. Vide Burrow 859.860. But by 1 Ann inhabitant may be a witneſs. Vide poſt. ſect. 20.

Sect. 7. As to the ſecond point, *viz.* In what manner ſuch bridges are to be repaired by ſtatute. It is enacted by 22 Hen. c. 5. "That the juſtices of peace in every ſhire of this realm, franchiſe, city, or borough, or four of them at the leaſt, whereof one to be of the *quorum*, may inquire, hear, and determine, in their general ſeſſions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make ſuch proceſs and pains upon every preſentment afore them, for the reformation of the ſame, againſt ſuch as owen to be charged for the making or amending of ſuch bridges, as the king's juſtices of his bench uſe commonly to do; or as it ſhall ſeem by their diſcretions to be neceſſary and convenient for the ſpeedy amendment of ſuch bridges."

2 Inſt. 701, 702, 6 Modern 255.

A remedy to repair decayed bridges.

13 Coke 33. Popham 192.

Sect. 8. And it is farther enacted, par. 2. and 3. "That where it cannot be known and proved what hundred, riding, wapentake, city, borough, town or pariſh, nor what perſon certain, or body politick, ought of right to make ſuch bridges decayed, by reaſon whereof ſuch decayed bridges, for lack of knowledge of ſuch as own to make them, for the moſt part lie long without any amendment, to the great annoyance of the king's ſubjects; in every ſuch caſe the ſaid bridges, if they be without city or town-corporate, ſhall be made by the inhabitants of the ſhire or riding, within which the ſaid bridge decayed ſhall happen to be: and if it be within any city or town-corporate, then by the inhabitants of every ſuch city or town-corporate wherein ſuch bridges ſhall be. And if part of any ſuch bridges ſo decayed happen to be in one ſhire, riding, city, or town-corporate, and the other part thereof in another ſhire, riding, city or town-corporate, or if part be within the limits of any city or town-corporate, and part without, or part within one riding, and part within another, that then in every ſuch caſe the inhabitants of the ſhires, ridings, cities or towns-corporate, ſhall be charged and chargeable to amend, make and repair ſuch part and portion of ſuch bridges ſo decayed, as ſhall lie and be within the limits of the ſhire, riding, city or town-corporate, wherein they be inhabited at the time of the ſame decays."

Juſtices may proceed againſt defaulters.

Sect. 9. And it is farther enacted, par. 4. "That in every ſuch caſe where it cannot be known and proved what perſons, lands, tenements, and bodies politick owen to make and repair ſuch bridges, that for ſpeedy reformation and amending of ſuch bridges, the juſtices of the peace within the ſhire or ridings, wherein ſuch decayed bridges being out of cities and towns-corporate, and if it be within cities or towns-corporate, then the juſtices of peace within every ſuch city or town corporate, or four of the ſaid juſti-

Juſtices may tax the inhabitants.

Vide 1 Keble 422.

"ces

Vide infra. 12 Geo. 2. Which ſeems to make this part of the act uſeleſs.

" ces at the leaſt, whereof one to be of the *quorum*, within
" limits of their ſeveral commiſſions and authorities, may
" before them the conſtables of every town and pariſh, be
" within the ſhire, riding, city or town-corporate, as
" within liberty as without, wherein ſuch bridges or any pa
" thereof ſhall happen to be, or elſe two of the moſt honeſt
" habitants within every ſuch town or pariſh in the ſaid ſh
" riding, city or town corporate, by the diſcretion of the
" juſtices of peace, *&c.* And at and upon the appearance
" ſuch conſtables or inhabitants the ſaid juſtices of peace,
" with the aſſent of the ſaid conſtables or inhabitants, may
" and ſet every inhabitant in any ſuch city, town or par
" within the limits of their commiſſions and authorities, to ſ
" reaſonable aid and ſum of money, as they ſhall think by th
" diſcretions convenient and ſufficient for the repairing, re-ed
" ing, and amending of ſuch bridges, and after ſuch taxat
" made, the ſaid juſtices ſhall cauſe the names and ſums of ev

Two collectors to be made. Sed vide infra. 1 Ann. c. 18. &c.

" particular perſon ſo by them taxed, to be written in a roll
" dented: and ſhall alſo have power and authority to make
" collectors of every hundred, for collection of all ſuch ſums
" money by them ſet and taxed, which collectors receiving
" one part of the ſaid roll indented, under the ſeals of the ſ
" juſtices, ſhall have power and authority to collect and rece
" all the particular ſums of money therein contained, and
" diſtrain every ſuch inhabitant as ſhall be taxed, and ref
" payment thereof, in his lands, goods and chattels, and to
" ſuch diſtreſs, and of the ſale thereof retain and receive
" the money taxed, and the reſidue, (if the diſtreſs be bett
" to deliver to the owner thereof: and that the ſame juſtices,
" four of them, within the limits of their commiſſions and auth
" rities, may alſo name and appoint two ſurveyors (5) wh

(5) The office of ſurveyors, for the ſake of conveniency, is uſually annexed by the juſtices to the office of the high conſtable. 1 Burn 280.

" ſhall ſee every ſuch decayed bridge repaired and amend
" from time to time as often as need ſhall require, to wh
" hands the ſaid collectors ſhall pay the ſaid ſums of money, ta
" ed and by them received, and that the collectors and ſurve
" ors and every of them, and their executors and adminiſtrato
" and the executors and adminiſtrators of them, and every
" them, from time to time, ſhall make a true declaration a
" account to the juſtices of peace of the ſhire, riding, city,
" town corporate, wherein they ſhall be appointed collectors
" ſurveyors, or to four of the ſame juſtices, whereof one to be
" the quorum, of the receipts, payments and expences of the ſa
" ſums of money: and if they or any of them refuſe that to d
" that then the ſame juſtices of peace, or four of them, from tim
" to time by their diſcretions, ſhall have power and authority
" make proceſs againſt the ſaid collectors and ſurveyors, a
" ever

" every of them their executors and adminiſtrators, and the exe-
" cutors and adminiſtrators of every of them, by attachments un-
" der their ſeals, returnable at the general ſeſſions of peace: and
" if they appear, then to compel them to account, as is aforeſaid;
" or elſe if they, or any of them, refuſe that to do, then to com-
" mit ſuch of them as ſhall refuſe to ward, there to remain with-
" out bail or mainprize, till the ſaid declaration and account be
" truly made."

Sect. 10. And it is farther enacted, par. 5. " That where
" any bridge or bridges lying in one ſhire or riding, and ſuch
" perſons inhabitants, bodies politick, lands or tenements, which
" owen to be charged with the making and amending of ſuch
" bridges, lien and abiden in another ſhire or riding, or where
" ſuch bridges been within any city or town corporate, and the
" perſons inhabitants, bodies politick, lands or tenements, that
" owen to make or repair any ſuch bridges lien and been out of
" the ſaid cities and towns corporate, in every ſuch caſe the
" juſtices of peace of the ſhire, city, or town corporate, within
" which ſuch decayed bridges, or any part thereof, ſhall happen
" to be, ſhall have power to enquire, hear and determine all
" ſuch annoyances, being within the limits of their commiſſions
" and authorities. And if the annoyance be preſented, then to
" make proceſs into every ſhire within this realm, againſt ſuch as
" owen to make or amend any ſuch bridges ſo preſented before
" them to be decayed, to the annoyance and let of the paſſage of
" the king's ſubjects, and to do further in every behalf in every
" ſuch caſe, as they might do by authority of the ſaid act, in
" caſe that the perſons, *&c.* which owen to be charged to the
" amending or making of ſuch bridges, *&c.* were in the ſame
" ſhire, *&c.* where ſuch annoyance ſhall happen to be. And
" that all ſheriffs, and bailiffs of liberties and and franchiſes,
" ſhall truly ſerve and execute proceſs as ſhall come to their hands
" from the ſaid juſtice of peace, afore whom any preſentment
" ſhall be had for any ſuch annoyance, according to the tenor
" and effect of the ſaid proceſs to them directed, *&c.* on pain to
" make ſuch fine as ſhall be ſet on them by the diſcretion of the
" ſaid juſtices."

Juſtices may make proceſs into every ſhire.

Which the ſheriffs ſhall ſerve.

Sect. 11. But it is provided, par. 6. " That nothing in
" the ſaid act contained ſhall be prejudicial to the liberties of
" the five ports, or members of the ſame."—And for reforma-
tion of annoyance of bridges within the ſaid ports and members,
it is farther enacted, par. 7. " That the warden, mayors, and
" bailiffs elected, and jurats of the ſame ports, and every of
" them, have power and authority to enquire, hear, and de-
" termine all manner of common annoyances of bridges within
" the ſame ports and members, and to make ſuch proceſs, pains,

Cinque Ports excepted.

"taxations, and all other things within the ſame ports an
"members, and the juſtices of the peace may do in other ſhir
"or places out of the ſame ports, by virtue of the ſaid act
"every behalf."

Allowance to collectors.

Sect. 12. And it is farther enacted, par. 8. "That the ſa
"juſtices, *&c.* may allow ſuch reaſonable coſts and charges
"the ſaid ſurveyors and collectors, as by their diſcretion ſha
"be thought convenient."

Of roads at the ends of bridges.

Sect. 13. And it is farther enacted, par. 9. "That ſuc
"part and portion of the highways in every part of this realm
"as well within franchiſe as without, as lie next adjoining
"any ends of any bridges within this realm, diſtant from an
"of the ſaid ends by the ſpace of 300 foot, be made, repaired
"and amended, as often as need ſhall require; and that th
"juſtices of peace in every ſhire of this realm, franchiſe, cit
"or borough or four of them at the leaſt, whereof one to b
"of the quorum, within the limits of their commiſſions an
"authorities, may enquire, hear, and determine in their gene
"ral ſeſſions, all manner of annoyances of and in ſuch high
"ways, ſo being and lying next adjoining to any ends of bridge
"within this realm, diſtant from any one of the ends of ſuc
"bridges 300 foot, and to do in every thing concerning th
"making, repairing, and amending ſuch highways, *&c.* in a
"large and ample manner as they might and may do to and fo
"the making, repairing, and amending of bridges, by virtue o
"the ſaid act."

2 Inſt. 701. Salk. 359. 6 Mod. 255, 256.

† *Sect.* 14. In the conſtruction of this ſtatute the followin
opinions have been holden: Firſt, That no private bridge
are within the purview thereof, but only ſuch as are common
the highways, where all the king's liege people have or may hav
paſſage.

2 Inſt. 701, 702.

Sect. 15. Secondly, That unleſs the juſtices of the peace o
a county, or town, *&c.* be four in number, and one of them
of the quorum, they have no manner of juriſdiction by virtue o
this ſtatute; but it is ſaid, That the juſtices of the peace of the
county, in which ſuch town, being not a county of itſelf, and
wanting ſuch a number of juſtices, ſhall lie, may, by virtue o
the firſt clauſe of the ſtatute, determine all annoyances of bridge
within ſuch town, *&c.* if it be known what perſons in certain
are bound to repair the ſame: but if it be not known, it ſeems
that ſuch annoyances are left to the remedy of the common law,
becauſe the clauſe, which in ſuch caſe authoriſes the juſtices o
the

the peace to tax all the inhabitants, ſeems expreſsly to confine the power of taxing the inhabitants of ſuch towns to their own juſtice, &c.

Sect. 16. Thirdly, That all houſholders dwelling in any county or town, &c. whether they occupy any lands or not; and alſo all perſons who have lands in their own poſſeſſion or manutenance, whether they dwell in the ſame county, &c. or not; and alſo all bodies politick, either reſiding in, or having lands in their own hands in a county, &c. are liable to be taxed as inhabitants, within the meaning of the ſtatute. 2 Inſt. 703.

Sect. 17. Fourthly, That the taxation to be made in purſuance of the ſtatute ought to be aſſeſſed diſtinctly on each inhabitant, and not on a whole hundred, pariſh, or town in general. 2 Inſt. 704. Vide 1 Keb. 91.

Sect. 18. Fifthly, That all privileges of exemptions and diſcharges from contribution to the repairs of decayed bridges, whether ſuch exemptions were originally derived from charter or act of parliament, or any other foundation whatſoever, are taken away by the expreſs words of the ſtatute, "That the juſtices, &c. "ſhall tax and ſet every inhabitant." 2 Inſt. 704.

Sect. 19. It hath been queſtioned whether a borough, which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. 1 Keble 68.

† *Sect.* 20. And to prevent more money being raiſed than is neceſſary, and to direct the application of what is raiſed, it is enacted, by 1 Anne, ſt. 1. c. 18. "That the juſtices in ſeſ-"ſions ſhall have full power, upon due preſentment to them "made that any bridge within their reſpective juriſdictions "is out of repair, and which by them hath uſually been or "ought to have been repaired, to aſſeſs every town, pariſh, or "place within their reſpective commiſſions in the uſual pro-"portions toward the repair of bridges, to be levied and col-"lected by the conſtables or by ſuch other perſon or perſons, "as the ſaid juſtices in ſeſſions ſhall direct, and paid by the "ſaid collectors to the high conſtables of every hundred in 6 "days after they ſhall have received the ſame, and the high "conſtables ſhall in 10 days after the receipt thereof pay the "ſame to ſuch perſon as the ſaid juſtices ſhall, in ſeſſions, ap-"point to be treaſurers of the ſame (allowing the ſaid per-"ſons not exceeding 3d. in the pound) to be employed and "accounted for according to the orders and directions of the "ſaid juſtices for and towards the amending of ſuch decayed "bridges and the highways at the end of ſuch bridges as need "ſhall require, which aſſeſſments ſhall be levied by diſtreſs "within 10 days after demand, and every conſtable or other

Vide the next ſection where the charges are directed to be paid out of the county rate.

Moore 103. 2 Hale 181.

" perſon who ſhall neglect to aſſeſs, collect, or pay the mone
" as aforeſaid, ſhall forfeit 40s. and every treaſurer that ſha
" pay any money but by the order of the juſtices as aforeſaid
" ſhall forfeit 5l. and all fines, iſſues, penalties or forfeiture
" upon any preſentment or indictment for not repairing, &c
" ſhall be paid into the hands of the treaſurer for the purpoſ
" aforeſaid, and not into the exchequer. And all queſtion
" concerning the repairs aforeſaid, ſhall be determined in th
" ſame county wherein they lie, and no preſentment or indict
" ment ſhall be removed by *certiorari* (a) out of the county int
" any other court, except the right of repairing by private per
" ſons (or by 5 & 6 Will. & Mary, c. 11. the right betwee
" pariſhes came in queſtion) and on which queſtion inhabitant
" are admiſſable witneſſes. The general iſſue may be pleade
" and this act and the 22 Hen. 8. may be given, with any ſpecia
" matter in evidence, and the plaintiff ſhall be liable to pa
" double coſts."

(a) A *certiorari* lies upon an order of juſtices concerning a private bridge, purſuant to a private ſtatute; but they ought to return the act upon which their order is founded. Dalt. 504. And it has been determined that this act of Quee Ann extends only to bridges where the county is charged to repairs and that where private perſon or pariſh is charged the 5 and 6 Will. 3. c. 11. hath allowed the granting *certiorari*. Strange 900.

The expence of repairing bridges to be raiſed by a county rate.

† *Sect.* 21. It is alſo enacted, by 12 Geo. 2. c. 29. ſ. 1
for the more eaſy aſſeſſing, levying and collecting the count
rates, " That no part of the money to be raiſed and collecte
" in purſuance of this act ſhall be applied to the repairs of an
" bridges, &c. until preſentments be made by the reſpectiv
" grand juries, at the aſſize, great ſeſſions, general gaol delivery
" or general or quarter-ſeſſions of the peace, held for the count
" or place of the inſufficiency, inconveniency, or want of repara
" tion of their bridges, &c. &c."

Juſtices may contract for the repair of bridges.

† *Sect.* 22. Alſo, it is further enacted, par. 14. " That
" when any public bridges, ramparts, banks or cepts or other
" works are required to be repaired at the expence of any
" county or place, the juſtices of the peace at their grand
" or quarter ſeſſions reſpectively, or the greater part of them
" then and there aſſembled, if they think proper and conve
" nient, after preſentment to be made as aforeſaid of the want
" of reparation of ſuch bridges, ramparts, banks or cepts
" may contract and agree with any perſon or perſons for re
" building, repairing and amending the ſame, and all other
" works which are to be repaired and done by aſſeſſment in
" the reſpective counties or places, for any term or terms o
" years not exceeding ſeven years at a certain annual ſum
" payment or allowance for the ſame; ſuch contractor or
" contractors giving ſufficient ſecurity for the due perform
" ance thereof to the clerk of the peace or other officer of the
" place reſpectively; and ſuch juſtices at their reſpective
" general or quarter ſeſſions ſhall give public notice of their
" intention

"intention of contracting as aforesaid; and such contracts shall "be made at the most reasonable price proposed; and all con- "tracts when agreed to, and all orders relating thereto shall be "entered in a book to be kept by the clerk of the peace or other "officer respectively for that purpose, and kept among the re- "cords of the place, to be from time to time inspected by any of "the said justices within the limits of their commissions and by "any person or persons employed concerning the same without "fee or reward."

Justices may purchase the adjoining land to rebuild.

† *Sect.* 23. It is also further enacted, by 14 Geo. 2. c. 33. "That the justices of the peace of any county or place, at their "general sessions or general quarter sessions assembled or the ma- "jor part of them, shall have power to purchase of, or agree, or "contract with any person or persons, bodies politick or corpo- "rate for any price or parcel of land adjoining or near to any "county bridge within the limits of their respective commissions, "for the more commodious enlarging, or convenient rebuilding "of the same; which pieces or parcel of land shall not exceed "one acre in the whole for any such bridge and shall from time "to time be paid for by the respective county treasurers out of "any monies raised or to be raised by virtue of 12 Geo. 2. c. 29; "such treasurers being thereunto authorised by orders under the "hands and seals of the justices at sessions or the major part of "them; which lands so purchased shall be conveyed as the said "justices in sessions shall appoint, in trust, for the uses and pur- "poses of enlarging or rebuilding such bridges respectively."

CHAPTER THE SEVENTY-EIGHTH.

Of NUSANCES relating to PUBLIC HOUSES.

FOR the better understanding of nusances relating to public houses, I shall consider: In what manner they are prevented and restrained by the common law, and in what manner by statute.

Sect. 1. As to the first point it seems to be agreed, That the keeper of an inn may, by the common law, be indicted and fined, as being guilty of a public nusance (a) if he usually harbour thieves, or persons of scandalous reputation, or (b) suffer frequent disorders in his house, or take exorbitant prices, or set (c) up a new inn in a place, where there is no manner of need of one, to the hindrance of other ancient and well governed

(a) Palm. 374. 2 Roll. 345.
(b) Sum. 146. Cro. Car. 549. Dalton c. 7.
(c) Sum. 146.

governed inns, or (a) keep it in a place in reſpect of its ſituation wholly unfit for ſuch a purpoſe.

(a) 2 Hale 174. Dalt. c. 7. Palm. 374. 2 Roll. 345.

Sect. 2. And it ſeems alſo to be clear, That if one who keeps a common inn, refuſe either to receive a traveller as a gueſt into his houſe, or to find him victuals, or (b) lodging, upon his tendering him a reaſonable (c) price for the ſame, he is not only liable to render (d) damages for the injury in an action on the caſe at the ſuit of the party grieved, but may alſo be (e) indicted and fined, at the ſuit of the king. Alſo it is ſaid, That he may be compelled by the conſtable (f) of the town to receive and entertain ſuch a perſon as his gueſt, and that it is no way (g) material whether he have any ſign before his door or not, if he make it his common buſineſs to entertain paſſengers.

(b) Palm. 374, 2 Roll. 345. (c) 10 H. 7. 8. 39 H. 6. 18. 19 9 Coke 87. (d) Dy. 158. B. Ac. ſur. caſ. 76. 92. (e) H.P.C. 146. Dalton c. 7. (f) 5 E. 4 2. (g) Palm. 374. 2 Roll. 345, 346. 8 Co. Caley's caſe. Blackerby 169. Cro, Eliz. 622. Brownlow 254. Keilw. 50. 11 and 12 Will. 3. c. 15. ſ. 2. 1 Salk. 388. Moor 877. 12 Mod. 255. Clayt. 97. Godbolt 346. Carth. 150. Shower 268.

Sect. 3. It ſeems to have been always clearly (h) agreed, That he who has an inn by preſcription, may lawfully enlarge it upon the ſame land which has been uſed with it, either by erecting new buildings thereon, or turning ſtables into chambers of entertainment, and that he ſhall have the ſame privilege in ſuch new parts of his houſe as in any of the old.

(h) 2 Roll. A. 84. 85.

Sect. 4. Alſo it ſeems to be (i) ſettled at this day, That any perſon may lawfully ſet up a new inn, unleſs it be inconvenient to the publick in ſome of the reſpects taken notice of in the firſt ſection, and that he has no need of any licence from the king for this purpoſe, for the keeping of an inn is no franchiſe, but a lawful trade, open to every ſubject. But if an inn degenerate into an ale-houſe, by ſuffering diſorderly tippling, it ſhall be deemed as ſuch.

(i) 2 Rol. A. 84. Salk. 45. 2 Roll. 345. Palm. 367, 374. 2 Keb. 506. 1 Bulſ. 109. Salk. 45. Blackerby 170. Godbolt 345. Hutton 100. Cro. Jac. 528.

But it is ſaid by Dalton, that inn keepers ought to have licence and be bound by recognizance for keeping good order as ale-houſe keepers are.

Dalton 56. 133. 204. Vide 455. ſect. 12.

And by the commiſſion of the peace, two juſtices, one whereof ſhall be of the quorum, may inquire of innholders, and of all and ſingular other perſons, who ſhall offend in the abuſe of weights and meaſures, or in the ſale of victuals, againſt the form of the ordinances in that behalf made.

1 Burrow 22.

Sect. 5. As to the ſecond point, *viz.* In what manner nuſances of this kind are prevented and reſtrained by ſtatute, it is enacted by 12 Edw. 2. c. 6. "That no officer in city or "in borough, that by reaſon of his office ought to keep aſ- "ſizes of wines and victuals, ſo long as he is attendant to "that

Vide F. N. B. 172. Regiſter 184. Raſt. 686.

"that office, ſhall not merchandize for wines nor victuals, nei-
"ther in groſs nor by retail; and if any be convict of ſuch of-
"fence, the merchandize ſhall be forfeited to the king, and the
"third part thereof delivered to the party that ſued for the
"ſame, &c."

Sect. 6. And it is farther enacted by 6 Rich. 2. c. 9. "That no victualler ſhall have, exerciſe, or occupy any judi-
"cial office in any town, but only where no other perſon ſuffi-
"cient may be found to have the ſame office. In which caſe yet
"the ſame judge for the time that he ſhall continue in the ſaid
"office, ſhall utterly omit and abſtain himſelf and his from the
"exerciſe of victualling, upon pain of forfeiting his victuals ſo
"ſold." Repealed by 7 Rich. 2. c. 11.

Sect. 7. And it is farther enacted by 3 Hen. 8. c. 8. "That
"as often as any victualler choſen to bear any office within any
"city, borough, or town-corporate, which for the time that he
"ſhall ſtand and be in ſuch office ſhould have the aſſeſſing and
"correction for ſelling of victuals, that then two diſcreet and ho-
"neſt perſons of the ſame city, borough, or town-corporate, not
"being victuallers, nor any of them being a victualler, ſhall be
"choſen by the commonalty of the ſame city, borough, or town-
"corporate, in like form as the ſaid officer ſhall be choſen:
"which two perſons, with the ſaid officer, ſhall be ſworn truly
"to ſeſs and ſet the prices and aſſizes of victuals there, for the
"time that any ſuch victualler ſhall abide in the ſame office:
"And that then it ſhall be lawful to all and every of the ſaid
"officers, after the ſame victuals be ſet and ſeſſed by the ſame
"officer, and the ſaid two perſons, or one of the ſame two per-
"ſons, the other being abſent, to merchant and ſell wines, and
"all other victual in groſs, and at retail, during the time that he
"ſhall be in any ſuch office, without any thing therefore to forfeit:
"The ſaid ſtatute, act, and ordinance of 12 Edw. 2. or any
"other act or acts, ordinance, or ſtatute to the contrary made
"in any wiſe notwithſtanding."

Sect. 8. Alſo it is enacted by 21 Jac. 1. c. 21. "That all
"hoſtlers or inn-holders ſhall ſell their horſe-bread, and their
"hay, oats, beans, peaſe, provender, and alſo all kind of vic-
"tual, both for man and beaſt, for reaſonable gain, having
"reſpect to the prices for which they ſhall be ſold in the mar-
"kets adjoining, without taking any thing for litter." Vide C. Jac. 609, 610. 2 Roll. 225, 226.

And it is farther enacted by the ſaid ſtatute, "That
"every hoſtler and innkeeper dwelling in any town or village,
"being a thoroughfare, and no city, town-corporate, or mar-
"ket town, wherein any common baker, having been an ap-
"prentice to the trade for ſeven years, is dwelling, may make
"within Carthew 150. Skin. 291. Raymond 162, Roll. Ab. 95. 9 Hen. 6. 53.

" within his houſe horſe-bread ſufficient, lawful, and of du
" aſſize, according to the price of grain or corn; any thin
" in the ſaid ſtatute contained to the contrary notwithſtand
" ing."

And it is farther enacted, " That if the horſe-bread, whic
" any of the ſaid hoſtlers or innholders ſhall make, be not ſuffi
" cient, lawful, and of due aſſize, according to the price of grai
" and corn, as aboveſaid; or that if any of them ſhall offend i
" any thing contrary to this act, the juſtices of aſſize, juſtices o
" oyer and terminer, juſtices of peace, in every ſhire, liberty
" or franchiſe within this realm, ſheriffs in their turns, and
" ſtewards in their leets, may inquire, hear, and determine the
" ſaid offences of the ſaid hoſtlers and innholders, who ſhall be
" fined for the firſt offence, according to the quantity of the of-
" fence, and for the ſecond offence ſhall be impriſoned for one
" month, and for the third ſhall ſtand upon the pillory, &c."

Before this ſtatute it was lawful for any one to keep an ale-houſe without licence, for it was a means of livelihood which any one was free to follow.

Sect. 9. And it is enacted by 5 and 6 Edw. 6. c. 25. " That the juſtices of peace within every ſhire, city, borough, " town-corporate, franchiſe, or liberty within this realm, or " two of them at the leaſt, whereof one to be of the *quorum*, " ſhall have full power and authority within every ſhire, city, " &c. to remove, diſcharge, and put away common ſelling of " ale and beer in common ale-houſes and tippling-houſes."

But if it was diſorderly kept it was indictable as a nuſance. Salk. 45.

Dalton c. 7. Hutt 100. Sum. 147. Ld. Ray. 1303. 1405.

Sect. 10. And it ſeems to have been the general opinion in the conſtruction of this clauſe, that an alehouſe keeper ſuppreſſed in purſuance of it, cannot be afterwards licenſed again but in open ſeſſions.

Salk. 45.

Sect. 11. And it is further enacted by the ſaid ſtatute of 5 and 6 Edw. 6. c. 25. ſ. 1. 6 and 26 Geo. 2. c. 31. " That none " ſhall be admitted or ſuffered to keep any common alehouſe or " tippling-houſe, except in fairs, but ſuch as ſhall be allowed in " the open ſeſſions, or by two juſtices of peace, whereof one to " be of the *quorum*. (1)

(1) The clauſe excepting fairs, in the ſeveral acts, ariſes from the neceſſity of the thing, reſpecting the accommodation of perſons reſorting thither. But thoſe who ſhall brew ſuch ale or beer to be ſold by them in fairs, muſt take care to give notice to the gaugers that the ſame may be ſurveyed; for though they are exempted from taking licence, they muſt nevertheleſs pay the duties of exciſe. And this indulgence ſeemeth to be intended only in the place where the common fair is held; and not in any private houſe, which may be within the limits of the town where ſuch fair ſhall be kept, eſpecially where there are licenſed ale-houſes ſufficient. 1 Burn. 25.

† S. 3.

† *Sect.* 12. But it is recited by 2 Geo. 2. c. 28. ſ. 11. That many inconveniencies have ariſen from perſons being licenſed to keep inns and common alehouſes (1) by juſtices of the peace, no living remote from the places of abode of ſuch perſons, may not be truly informed as to the occaſion or want of ſuch inns or common alehouſes or the characters of the perſons applying for licence to keep the ſame; it is therefore enacted by the 26 Geo. 2. c. 31. ſ. 4. "That no licences for the purpoſes aforeſaid, ſhall be granted but on the firſt day of September, yearly, or within twenty days after; and that ſuch licence ſhall be made for one year only to commence on the twenty-ninth day of the ſaid September: and that the day and place for granting ſuch licences ſhall be appointed by two or more of the juſtices acting for the diviſion (2) (where the perſon to be licenſed dwells) by a warrant under their hands and ſeals at leaſt ten days before ſuch meeting, directed to the high conſtable or high conſtables of the ſaid diviſion requiring him or them to order his or their reſpective petty conſtable or other peace officers to give notice to the ſeveral innkeepers and alehouſe keepers within their reſpective conſtablewicks of the day and place of ſuch meeting; and all licences hereafter granted at any other time or place ſhall be null and void to all intents and purpoſes whatſoever.—But by ſect. 16. this act ſhall not extend to alter the time or times of granting ſuch licences for keeping of common inns or ale-houſes in any city or town-corporate. (3)

The manner and time of granting licences.

12 Mod. 254. 2 Seſſ. Ca. 183. Andrews 81.

For the penalties of writing licences without being legally ſtamped. Vide 1 Ann ſt. 2. c. 22. ſ. 6. 9 Ann c. 23. 6 Geo. 1. c. 21. ſ. 56. 29 Geo. 2. c. 12. ſ. 20.

(1) Houſes for the accommodation of perſon who reſort to the ſeveral watering places the kingdom, where their reſpective owners, their gueſts lodge, board, dreſs their victuals, ſupply them with ale, beer and other liquors and entertain their horſes at 8d a day, ſell to no other perſons are not inns nor ale-houſes within this act.

(2) But it is not neceſſary to ſet forth ſpecially in the licence that it was granted at a neral meeting of the juſtices holden for the diviſion: and therefore a conviction for eeping an ale-houſe without ſuch licence, is not good upon the evidence of the licence y but there muſt be other evidence. 2 Seſſ. Ca. 183. Andrews 81.

(3) In cities and towns-corporate ſuch certificate is ſuppoſed not to be neceſſary by ſion of the propinquity of the perſons to be licenſed. 1 Burr. 27.

† *Sect.* 13. And it is alſo enacted by the ſaid ſtatute, "That upon granting licences by juſtices of the peace to any perſon to keep an alehouſe, inn, victualling houſe, or to ſell ale, beer, and other liquors by retail, every ſuch perſon ſhall enter into a recognizance to the king in the ſum of 10*l.* with two ſufficient ſureties each in the ſum of 5*l.* or one ſufficient ſurety in the ſum of 10*l.* under the uſual condition for maintenance of good order and rule within the ſame; and in caſe the perſon applying for ſuch licence ſhall be hindred through ſickneſs or infirmity or any other reaſonable cauſe to be allowed by the ſaid juſtices, to attend in perſon at the meeting of the ſame "juſtices

Juſtices authoriſed to grant licences upon the party entering into a recognizance.

" justices for granting the said licences that it shall be lawful
" them to grant such licence upon two sufficient sureties ente
" into such recognizance each in the penalty of 10*l.* for per
" mance of the condition of the said recognizance. (4)

(4) The court of King's Bench has no power to review the reasons upon which justic the peace from their judgments in granting licences, by *way of appeal from such judg or over ruling the discretion intrusted to them.* But if it clearly appears that the justices been partially, maliciously, or corruptly influenced in the exercise of this discretion have consequently abused the trust reposed in them; they are liable to prosecution b dictment or information or even possibly by action if the malice be very gross and in ous. But, if their judgment be wrong, and their heart and intentions be pure, God bid, that *they should be punished.* Lord Mansfield. Burrow 556. But on the contrar justices have acted from bad motives and *mala fide*, in granting licences, the circumst of their being intrusted with an absolute discretion forms the strongest case for the i position of the court. Burrows 1716, 1786. A *mandamus* therefore will not lie to c pel the justices to grant a licence. 1 Barnard K. B. 402. 1 Burrows 556. But the c on affidavits importing a charge of corruption will call upon them to shew the rea whereby they guided their discretions and will grant a rule to shew cause why they d not grant the licence, and if they do not shew sufficient cause the court will grant i mation. And for instances of granting and refusing informations. Vide Strange Burrows 653. 1317.

(5) The justices may suppress by order, without either information or conviction or shewing cause. For conviction is only necessary where the penalty is proceeded for, which ought to be by *scire facias* Ld. Raymond 1303, 1405. Vide Strange 631, contra.

Sect. 14. And it is further enacted, by 5 and 6 Edw 25. f. 3. " That the justices of peace of every shire, city, " rough, *&c.* may at their quarter-sessions by presentment, " formation, or otherwise by their discretion, inquire of all " persons as shall be allowed to keep any ale-house or tippl " house, and that be bound by recognizance, as is aforesaid " any of them have done any act whereby they have forfe " the same recognizance: And the said justices shall open u " every such presentment or information, award process ag " every such person so presented or complained upon be " them, to shew why he should not forfeit his recognizance, " may also hear and determine the same by all such ways " means, as by their discretion shall be thought good." (5)

Justices may take away licences unless cause be shewn that the conditions of the recognizance have been fulfilled.

(6) If the justice convicts without a summons he is liable to an information for the misdemeanor. Strange 678. L. Ray 1407. Sess. Cases 353. L. Ray. 1303. L. Ray. 1405.

† *Sect.* 15. And it is further enacted by 26 Geo. 2. c. 3 7. " That any justice of the peace of any county, riding, c " liberty, or town-corporate wherein such licence shall be gr " ed, upon complaint or information that such licensed pe " hath done or committed any act, offence or misdemea " whereby in the judgment of the same justice such recogniz " may be forfeited, on the condition thereof broken may " summons (6) under his hand and seal require such perso " complained of, or informed against to appear at the next " neral or quarter-sessions of the peace for the said county, " ing, city, liberty or town corporate, then and there to ans " to the matter of such complaint or information; and also " bind the person or persons who shall make such complain " information or any other person or persons in a recognizanc " appear at such general or quarter-session and give evide " aga

ainſt ſuch perſon ſo complained of or informed againſt; and e juſtices of the peace in their general or quarter-ſeſſions ſhall ve power to direct the jury which ſhall attend at ſuch ſeſ- ns for the trial of traverſes or ſome other jury of twelve ho- eſt and ſubſtantial men to be then and there impannelled by e ſheriff without fee or reward, to inquire of the miſde- eanor charged in the ſaid complaint or information; and if ch jury ſhall find that the perſon ſo complained of or inform- againſt hath done any act whereby the condition of his re- gnizance is broken, ſuch act being ſpecified in ſuch com- aint or information, it ſhall be lawful for the court of ſeſſion adjudge ſuch perſon guilty of the breach of ſuch recogniz- ce (7) which verdict and adjudication ſhall be final to all in- nts and purpoſes, and thereupon the ſaid juſtices ſhall order e recognizance entered into by ſuch offender to be eſtreated o the court of exchequer to be levied for his majeſty's uſe; d that the ſaid perſon the condition of whoſe recognizance all be ſo adjudged to be broken and forfeited, ſhall from and fter ſuch adjudication be utterly diſabled to ſell any ale, eer, cyder, perry, ſpirituous liquors or ſtrong waters for the ace of three years, and any licence granted to ſuch perſon uring ſuch term ſhall be void and of none effect—But the ſtices may adjourn the hearing and trial to the then next ge- eral or quarter-ſeſſions where the ſame ſhall be finally deter- ined."

7) There are two modes of ſuppreſſing a licenſed ale-houſe: Firſt, by proceeding breach of the condition of the recognizance; (but the party having another trade or g a bailiff can be no cauſe in ſuch caſe.) Secondly, by indictment, and then there t be ſuch diſorders proved, as will amount to a nuſance. Salk. 45. for, except for rder, the juſtices cannot ſuppreſs a licenſed ale-houſe. Salk. 471. But where an ale- ſe is ſuppreſſed by indictment as a common nuſance; it is as to the perſon, not the ſe, for that may be licenſed to a better man. Hutt 100.

4 "And by par. 11. If any perſon ſhall be diſabled by con- viction to ſell ale, beer, cyder or perry; he ſhall by the ſame conviction be diſabled to ſell any ſpirituous liquors, any licence before obtained for that purpoſe notwithſtanding, and every licence granted to him for ſelling ale, beer, cyder, perry or ſpirituous liquors ſhall be void, and if he ſhall ſell during ſuch diſability he ſhall be puniſhed, as for ſelling without licence, nd a certificate from the clerk of the peace (which he ſhall grant without fee) of ſuch conviction ſhall be legal evidence."

Sect. 16. And it is farther enacted, by 5 and 6 Edw. 6. c. 5. f. 4. "That if any perſon, other than ſuch as ſhall be al- lowed by the ſaid juſtices, ſhall obſtinately, and upon his own authority, take upon him to keep a common ale-houſe, or tippling-houſe, or ſhall contrary to the commandment of the

"ſaid

" ſaid juſtices, or two of them, uſe commonly ſelling of ale
" beer, except in fairs; that then the ſaid juſtices, or two of th
" whereof one to be of the *quorum*, ſhall for every ſuch off
" commit every ſuch perſon ſo offending, to the common
" within the ſaid ſhire, city, borough, &c, there to remain w
" out bail or mainprize by the ſpace of three days; and be
" his deliverance the ſaid juſtices ſhall take his recognizance
" two ſureties, That he ſhall not keep any common aleho
" tippling-houſe, or uſe commonly ſelling of ale or beer, a
" the diſcretion of the ſaid juſtices ſhall ſeem convenient."

The exciſe-man's book to be proof of a perſon being an alehouſekeeper.

† *Sect.* 17. And it is farther enacted by 26 Geo. 2. c. 3
9. " That where any juſtice of the peace ſhall ſuſpect that
" alehouſe-keeper, victualler, or retailer, ſells ale, beer, cy
" or perry, without ſuch licence, it ſhall and may be lawful
" ſuch juſtice to call ſuch ſuſpected perſon before him, and
" any exciſe-officer or gauger to produce before ſuch juſtice
" ſtock book, or other account which ſuch officer keeps, of
" charge or ſurvey of ſuch ſuſpected perſon in reſpect of an
" the liquors aforeſaid; and likewiſe to examine ſuch exc
" officer or gauger upon oath touching the manner in which
" officer ſurveys or charges ſuch ſuſpected perſon in reſpect
" any liquors aforeſaid, or how or in what manner ſuch ſuſpec
" perſon actually pays the duties for any of the ſaid liquors;
" if it ſhall appear by ſuch ſtock book or othe account, or by
" examination of the ſaid officer or gauger, that ſuch perſon
" ſuſpected of ſelling any of the liquors aforeſaid, is ſurveyed
" a victualler or retailer, and is charged with the ſame du
" that victuallers and retailers are uſually charged with, and
" for any of the the liquors aforeſaid, and is not intitled to
" allowance or abatement given to common brewers, then and
" ſuch caſe ſuch ſuſpected perſon ſhall be deemed an alehou
" keeper, victualler, retailer, or ſeller of any of the liqu
" aforeſaid, to all intents and purpoſes, as if the ſame had be
" proved by two witneſſes."

Juſtices may examine perſons ſuſpected not to be licenſed.

† *Sect.* 18. And it is farther enacted, par. 10. " Tha
" any perſon ſhall make information before any one juſti
" and ſhew probable cauſe that he ſuſpects that any per
" ſells ale, beer, or other liquors, without a licence from t
" juſtices, it ſhall be lawful for ſuch juſtice to call ſuch ſ
" pected perſon before him, and alſo to ſummon any ot
" perſon as evidence, to prove the charge againſt ſuch ſ
" pected perſon; and if ſuch perſon ſo ſummoned ſhall refu
" to appear, or when appearing ſhall refuſe to be examin
" upon oath, and give evidence as aforeſaid, ſuch perſon
" perſ

persons shall forfeit the sum of 10*l.* to be levied by distress, *&c.* for the use of the poor where the offender shall live." (8)

(8) The justices may suppress an unlicensed alehouse at discretion, for on the denial of licence no appeal lies. And on the commitment of the owner of such unlicensed house, want of a licence can only come in question, and not the reason why it was denied. 1, 46.

Sect. 19. And it is farther enacted, by 3 Car 1. c. 3. That if any person shall upon his own authority, not being thereunto lawfully licensed, take upon him to keep a common alehouse or tippling-house, or use commonly selling of ale, or beer, cyder, or perry, except in fairs, every such persons shall for every such offence forfeit twenty-shillings to the use of the poor of the parish where such offence shall be committed; the same offence being viewed by any mayor, bailiff, or justice of peace, or other head officer within the several limits, or confessed by the party so offending, or proved by the oath of two witnesses, to be taken before any mayor, bailiff, or other head officer, or any justice of peace, being within the limits of their commission." (9)

8 Modern 175. Strange 555. Sess. Cas. 264.

(9) The remainder of this section which was recited in the former edition, prescribed the form in which the penalty should be levied, but as this part seems to be virtually repealed 5 Geo. 3. c. 46. which prescribes the amount and the manner of levying the penalties this offence, I have omitted to insert it. Vide infra, sect. 39. page 464.

† Sect. 20. And it is farther enacted by 26 Geo. 2. c. 31. 4. "That the said recognizance, with the condition thereof, fairly written or printed, shall forthwith, or at the next general or quarter sessions of the peace at farthest, after granting such licences, be sent or returned to the clerks of the peace, or persons acting as such, for every county, riding, city, liberty, or town-corporate in *England*, wherein such licences shall be granted, under the hands of the justices of peace, before whom such recognizance were taken, to be by the said clerks of the peace, or such other person acting as such, duly entered or filed amongst the records of the sessions of the peace; and for every such licence granted without taking such recognizance, and for every such recognizance taken, and not sent or returned as aforesaid, every justice of the peace signing such licence, shall forfeit 3*l.* 6*s.* 8*d.* and by sect. 6. the forfeiture for granting licences without taking recognizance, shall be together with costs to him who shall sue."

The clerk of the peace to return the recognizances to the sessions.

† Sect. 21. And it is also further enacted, by par. 5. That the clerks of the peace shall keep a register or calendar of all the recognizances so sent or returned, and shall deliver to the justices at their general meetings in September, every year, for granting licences in each division, or place, a true copy of such register or calendar; and that for "every

Of which they shall deliver an account to the justices at their yearly meetings.

" every recognizance there ſhall be paid to the juſtices
" taking ſuch recognizances to the clerk of the peace, as a
" recording, and for making and delivering copies as afore
" one ſhilling, and no more, by the perſon licenſed, over
" above the fees payable to the ſaid juſtices clerks."

Conviction of unlicenſed perſons to be returned, &c.

† *Sect.* 22. And it is further enacted by par. 13. "
" every conviction of any offender for ſelling ale, beer, or
" liquors without ſuch licence, or after being diſabled to ſe
" aforeſaid, ſhall be certified by the juſtice of peace makin
" ſame, to the next general or quarter ſeſſions to be filed an
" tered among the records of the ſaid ſeſſion: and there ſha
" added that the ſame is the firſt, ſecond or third convictio
" Provided always, that the offender who ſhall be puniſhe
" virtue of this act, ſhall not be puniſhed for the ſame offenc
" virtue of any former act, and *è converſo*. Nor ſhall this a
" tend to the two univerſities."

The manner of obtaining a licence for a houſe not licenſed before.

† *Sect.* 23. And it is further enacted by the above-
tioned ſtatute 26 Geo. 2. c. 31. par. 2. for the better preven
diſorders in alehouſes, " That no licence ſhall be granted to
" perſon (except in cities and towns corporate, ſ. 16.) not lic
" ed the year preceding, unleſs ſuch perſon produce at the g
" ral meeting of the juſtices in September, a certificate u
" the hands of the parſon, vicar, or curate, and the major
" of the churchwardens and overſeers, or elſe of three or
" reputable and ſubſtantial houſeholders and inhabitants of
" pariſh or place where ſuch alehouſe is to be, ſetting forth
" ſuch perſon is of good fame, and of ſober life and converſati
" and it ſhall be mentioned in ſuch licence that ſuch certifi
" was produced, otherwiſe ſuch licence ſhall be null
" void." (10)

1 Burr. 557, 558.

(10) In cities and towns corporate ſuch certificate is ſuppoſed not to be neceſſary, reaſon of the propinquity of the perſon to be licenſed. 1 Burn 27. Yet it is diſcr onary in the juſtices whom they will licenſe, and a mandamus will not lie to compel juſtices, becauſe the reaſons why it was denied reſide with themſelves. Str. 881.

How in caſes of death the licences may be made good.

† *Sect.* 24. And it is further enacted by ſaid ſtatute, par
" That if any licenſed perſon ſhall die, or remove from
" alehouſe, it ſhall be lawful for the perſon ſucceeding
" ſuch houſe, to keep on the ſaid alehouſe during the reſi
" of the term of ſuch licence, on condition that within thi
" days after ſuch death or removal, ſuch perſon obtain ſ
" certificate as aforeſaid, (11) to be ſigned by ſome neighbo
" ing juſtice, in order to its being produced at the n
" general meeting in September; and if ſuch certificate

(11) By 29 Geo. 2. c. 12. ſ. 23. the neceſſity of this certificate is diſpenſed with in the repreſentatives of the party dying.

not ſo obtained and ſigned within the ſaid thirty days, then immediately from and after the expiration thereof, ſuch licence ſhall be null and void; and no licence ſhall entitle any perſon to keep an alehouſe in any other place than that in which it was firſt kept by virtue of ſuch licence; and ſuch licence with regard to all other places, ſhall be null and void." Vide infra, ſect. 35.

† *Sect.* 25. And it is further enacted by 26 Geo. 2. c. 13. ſ. 1. "That no juſtice of the peace being a common brewer of ale or beer, innkeeper or diſtiller, or a ſeller of or dealer in ale or ſpirituous liquors, or intereſted in any of the ſaid trades, or being a victualler or malſter, ſhall be capable, or have any power to grant licences for ſelling ale or beer, or any other liquors, but the ſame ſhall be void." No juſtice who deals in malt or ſpirituous liquors, ſhall interfere in granting licences.

† *Sect.* 26. And by 4 Jac. 1. c. 4. "If any perſon ſhall ſell or deliver any beer or ale to any perſon that ſhall then ſell beer or ale, as a common tippler, or alehouſe keeper, the ſame perſon not having a licence to ſell ale or beer, (except it be for the uſe of his houſehold only); he ſhall forfeit for every barrel 6*s.* 8*d.* and ſo proportionally for other quantities; half to the poor, and half to him that ſhall ſue in ſeſſions by action of debt, information, indictment, or preſentment. Forfeiture for ſelling in an unlicenſed houſe.

† *Sect.* 27. It is enacted by 2 Geo. 2. c. 28. ſect. 10. "That no perſon or perſons whatſoever ſhall ſell brandy or other diſtilled liquors by retail, to be drank in his, her, or their houſe or houſes, but ſuch perſons only as ſhall be thereunto licenſed, in the ſame manner, and liable to the ſame laws, as common alehouſe keepers." Sellers of ſpirituous liquors to be licenſed in the ſame manner as alehouſe keepers.

† *Sect.* 28. And by the 10 Geo. 2. c. 17. ſect. 10, 11. No perſon or perſons ſhall be enabled to ſell made wines, to be drunk in his, her, or their houſe or houſes, unleſs firſt licenſed by two juſtices of the county, or place where the ſame are ſold; and no ſuch licence ſhall be granted but to perſons who ſhall keep publick victualling houſes, inns, coffeehouſes, or alehouſes." Seller of wines alſo muſt be licenſed. For the ſtamp-duties on wine licences, vide 9 Anne, c. 23.—30. Geo. 2. c. 19. and 31 Geo. 2. c. 31. ſ. 7.

† *Sect.* 29. And it is further enacted by 16 Geo. 2. c. 8. ſ. 8. "That no perſon ſhall preſume to retail any brandy, rum, arrack, uſquebaugh, geneva, aquavitæ, or any other diſtilled ſpirituous liquors, or ſtrong waters mixed or unmixed, by whatever name they may be called, publickly or privately, without firſt taking out a licence (12) for that purpoſe, within ten days at leaſt before they ſhall retail the ſame, and for which they ſhall pay 20*s.*: which licence, if taken out within the bills of mortality, ſhall be under the hands and ſeals of two of the commiſſioners of exciſe, *&c.* But if "taken Sellers of ſtrong waters, &c. muſt be licenſed. (12) Vide 1 Burn 32, for an obſervation on the double licence required for retailing *malt* liquors and *ſpirituous* liquors,

and the attempt made by the exciſe office to keep their juriſdiction diſtinct from the juſtices.

" taken out without the limits aforeſaid, then ſuch licence
" be executed under the hands and ſeals of the ſeveral collec
" and ſupervifors of exciſe within their reſpective diſtricts;
" a freſh licence ſhall be taken out ten days at the leaſt before
" expiration of the twelve months after the taking out of the
" licence, and in the ſame manner to renew ſuch licence
" year to year on pain of 10*l.* or two months hard labour,
" paid, on conviction by one juſtice. And by 24 Geo. 2. c.
" ſect. 11. and 26 Geo. 2. c. 13. ſect. 8. it ſhall in no caſe
" mitigated below 5*l.*—And by 29 Geo. 2. c. 12. ſect. 22.
" perſon ſhall be firſt licenſed to ſell ale or ſpirituous liquors,
" two or more juſtices of the peace."—

By 2 Geo. 2. c. 28. ſ. 10. Juſtices of the peace and other officers ſhall have the ſame juriſdiction over ſuch retailers of ſpirituous liquors as they have over alehouſe keepers.

Sellers of leſs than two gallons to be deemed retailers. Vide 11 Geo. 2. c. 26. ſ. 1. where clandeſtine ſellers are deemed retailers. And 9 Geo. 2. c. 23. ſ. 16. where giving liquors to ſervants, or apprentices fetching goods from ſhops, is deemed retailing. Vide alſo ſect. reſpecting paying wages in ſpirituous liquors.

† *Sect.* 30 And by 17 Geo. 2. c. 17. ſect. 22. "Every
" ſon who ſhall retail ſpirituous liquors mixed or unmixed,
" drank in any quantity whatſoever, in any place to him bel
" ing, or ſhall retail, or ſend the ſame abroad in leſs than
" gallons, ſhall be deemed a retailer.—And by ſect. 19. no
" licence ſhall be granted, except to ſuch perſons only who
" taverns, victualling houſes, inns, coffeehouſes, or alehouſ
" and all other licences ſhall be void; and if any licenſed
" ſon ſhall exerciſe the trade of a diſtiller, grocer, or chand
" or keep a brandy ſhop for ſale of ſpirituous liquors, the lic
" ſhall be void.'

To what kind of publick-houſekeepers licences ſhall be only granted.

† *Sect.* 31. And by 24 Geo. 2. c. 40. ſect. 12. and 26 G
2. c. 13. ſect. 9. "No licence ſhall be granted within the li
" of the head office of exciſe in London, but to ſuch as occ
" tenements of 10*l.* a-year, and pay pariſh rates for the ſame,
" in places where the occupiers of houſes are not rated to
" church and poor, then to ſuch perſons as pay rent of 12
" year, and not otherwiſe, nor to perſons in any other par
" the kingdom but ſuch as pay to the church and poor: and
" licence ſhall be of any avail longer than he ſhall be ſo q
" lified."

Puniſhment on perſons ſelling diſtil ed liquors without licence.

† *Sect.* 32. And by 24 Geo. 2. c. 40. ſect. 13. and 9 G
3. c. 6. "All the diſtilled liquors that ſhall be then, or at
" time within ſix months after conviction of ſuch unlicenſed p
" ſon, found in the cuſtody, houſe, or other place occupied th
" with, whether it be in his own occupation or not, ſhall, by war
" of the ſaid commiſſioners, or of one juſtice, be ſeized and ſtaved
" otherwiſe deſtroyed. And if any perſon ſhall offend again in
" manner the commiſſioners, or juſtices before whom he ſhall be c
" victed of ſuch ſubſequent offences, may inflict the penalties

" any former law to be inflicted for ſuch offence, and alſo com-
" mit the offender to the houſe of correction, not exceeding three
" months."

† *Sect.* 33. And by 24 Geo. 2. c. 40. ſect. 41. " The com-
" miſſioners, or one juſtice on oath of any offence againſt this act,
" or any other act, for retailing of ſpirituous liquors, may grant
" a warrant to any of the peace officers, or other pariſh officers,
" to enter and ſearch the houſes and other places where the of-
" fence ſhall be ſworn to have been committed, or in the occupa-
" tion of the perſons ſworn to be guilty thereof, and they may
" break open the doors if not opened on demand, and ſeize all
" ſuch diſtilled ſpirituous liquors as they ſhall there find, and
" detain the ſame till the offence ſhall be heard and determined;
" and if the offender be convicted, the liquors ſhall be forthwith
" ſtaved; and if he be not convicted, the ſame ſhall be re-
" ſtored."

Officers by warrant may break open doors, &c.

† *Sect.* 34. And whereas the aforeſaid penalty of 10l. is ſometimes inſufficient to deter offenders, it is therefore enacted by 13 Geo. 3. c. 56. " That whoever, for himſelf, or by any
" other perſon for his benefit, ſhall preſume to retail any diſtilled
" ſpirituous liquors, or ſtrong waters, without firſt taking out a
" licence for that purpoſe, in the manner before preſcribed and
" directed, ſhall forfeit 50l. for each offence, to be ſued for,
" levied, recovered, and mitigated by any law of exciſe now in
" force, or by action of debt or information at Weſtminſter, half
" to the king, half to the proſecutor: but this penalty ſhall not
" either by the commiſſioners or juſtices be reduced below 5l."

The penalty of retailing diſtilled liquors without a licence, increaſed.

† *Sect.* 35. And it is further enacted by 29 Geo. 2. c. 12. ſect. 32. " That if any perſons ſo licenſed to ſell ale, beer, or
" other exciſeable liquors, ſhall die or remove from the ale-
" houſe, or other place wherein ſuch ale, beer, or other li-
" quors, ſhall, by virtue of ſuch licence, be ſold, it ſhall and
" may be lawful for the executors, adminiſtrators, and aſſigns
" of ſuch perſon ſo dying or removing, who ſhall be poſſeſſed
" of ſuch houſe or place, or the occupier thereof, to ſell ale,
" beer, or other liquors therein, during the reſidue of the term
" for which ſuch licence ſhall have been granted to the perſon
" ſo dying or removing, without any certificate from any juſtice
" of the peace, or any new licence to be had and obtained in that
" behalf, any thing in 26 Geo. 2. or any other law to the con-
" trary notwithſtanding."

The repreſentatives of a publican may uſe the unexpired term of the licence, without the certificate required by 26 Geo. 2. c 31. Vide ante ſect. 24.

† *Sect.* 36. And it is further enacted by ſaid ſtatute, ſect. 24. " That in caſe any alehouſe in England ſhall become
" empty or unoccupied after the general day appointed for li-
" cenſing, (the occupier whereof was duly licenſed the year

How houſes which become empty may be licenſed.

" preceding) it ſhall be lawful for any two of his majeſ
" juſtices of peace at a petty ſeſſions to grant a new licen
" to any new tenant or occupier to open ſuch houſe, as
" alehouſe, or victualling houſe, and to ſell ale there till
" next general licenſing day, ſo as the ſaid licence be ſtamp
" as directed by the act: ſuch new tenant or occupier obtai
" ing ſuch certificate as is directed and preſcribed by 26 Ge
" 2. c. 31. But this act not to extend to licences granted
" commiſſioners of exciſe."

Priſon keepers ſelling liquors deemed alehouſe keepers.

† *Sect.* 37. And by ſect. 26. " Every perſon who ſhall r
" tail ale, beer, or other liquors, in any priſon, or houſe
" correction, or workhouſe, ſhall be deemed keepers of co
" mon alehouſes and tippling houſes, unleſs they ſhall obtain
" licence according to law."

Sellers of ſpirituous liquors muſt have ale licences alſo.

† *Sect.* 38. And by 29 Geo. 2 c. 29. ſect. 22. " Neith
" the commiſſioners of exciſe, or any of the collectors or ſu
" perviſors, or any other officers appointed to deliver licenc
" to the retailers of any ſpirituous liquors or ſtrong water
" ſhall grant or deliver any ſuch licence to any perſon who ſha
" not produce a licence, granted to him by juſtices of th
" peace to ſell ale, beer, and other exciſeable liquors, an
" ſtamped according to 9 Anne, c. 23."

All the former penalties upon perſons ſelling liquors without licence for that purpoſe, made uniform.

† *Sect.* 39. And whereas by the laws now in force, perſon
ſelling ale or beer, or other exciſeable liquors by retail, with
out licence, are liable and ſubject by different laws to differen
penalties and puniſhments, which has occaſioned much confuſ
on, and an ill and improper uſe has been made thereof in many
inſtances: for the prevention thereof it is enacted by 5 Geo. 3
c. 46. ſect. 22. " That every perſon lawfully convicted of ſel
" ling ale or beer, or other exciſeable liquors by retail, withou
" being duly licenſed ſo to do, ſhall, for every ſuch offence
" forfeit and undergo the ſeveral penalties and puniſhment
" herein after mentioned, and provided in that behalf, inſtead
" and in lieu of the ſeveral pecuniary and corporal puniſhment
" which they are now liable or ſubject to by any law now in
" force; that is to ſay, for the firſt offence the ſum of 40s. and
" alſo the coſts and expence of convicting ſuch offender; and
" in caſe ſuch ſum, together with the charges and expences of
" convicting ſuch offender, ſhall not be paid within the ſpace of
" fourteen days next after ſuch conviction, that then the offen-
" der ſhall ſuffer impriſonment for one month, unleſs the ſaid
" penalty, and the coſts, charges, and expences of ſuch con-
" viction ſhall be ſooner paid; for the ſecond offence 4*l.* &c. and,
" if not paid within a week, two months impriſonment; and for
" the third, and every other offence, the ſum of 6*l.* &c. and, if

" not

not paid in three days, three months impriſonment. All which ſaid coſts and expences ſhall be aſſeſſed, ſettled, and aſcertained by the juſtice or juſtices of the peace before whom ſuch offenders ſhall reſpectively be convicted; and all the penalties, forfeitures, &c. ſhall go, half to the king, and the other half to the informer; together with all ſuch coſts, charges, and expences, to be aſſeſſed or aſcertained as aforeſaid."

† Sect. 40. And it is farther enacted by 5 Geo. 3. c. 46. ſect. 23. "That it ſhall be lawful for any one or more juſtice or juſtices of the peace of the county or place, to hear and determine the ſame offences in a ſummary way; which ſaid juſtice or juſtices of the peace are hereby authoriſed and required, upon any information exhibited, or complaint made in that behalf, to or before him or them, to ſummon the party or parties accuſed, and alſo the witneſſes on either ſide, (if they ſhall be required to ſummon any ſuch witneſſes) and upon the the appearance or contempt of the party or parties accuſed, by not appearing, to proceed to examine and hear the matter in a ſummary way: and alſo to examine ſuch witneſſes on oath as ſhall be produced therein, and to give his or their judgment thereon; and in caſe he or they ſhall convict the party or parties ſo accuſed, or complained againſt, of the offence laid to his, her, or their charge, and ſuch party or parties ſhall refuſe or neglect to pay the penalty or penalties, for which he, ſhe or they ſtand convicted, within the time herein before mentioned for that purpoſe, together with the coſts of ſuch conviction or convictions, to be aſſeſſed, ſettled, and aſcertained as aforeſaid; that then it ſhall be lawful for every ſuch juſtice and juſtices to iſſue a warrant under their hands and ſeals, for the apprehending and committing to priſon any ſuch offender, for ſuch time, and in ſuch manner, as the nature of the offence ſhall require, according to the true intent and meaning of this act."

Juſtices may hear and determine the offence.

N. B. The number of witneſſes neceſſary toward the conviction is not here mentioned and therefore this ſeemeth to reſt as it was before, on the ſtatute of 3 Car. 1. c. 3 which directs the conviction to be on confeſſion of the offender, or oath of *two* witneſſes 1 Burn 24.

† Sect. 41. And it is further enacted, par. 24. "That whoever ſhall be ſummoned as a witneſs before ſuch juſtice touching the matters aforeſaid, either on the part of the proſecution, or the party accuſed, and ſhall neglect or refuſe to appear at the time and place to be for that purpoſe appointed, without a reaſonable excuſe to be allowed of by ſuch juſtice; or appearing ſhall refuſe to be examined on oath and give evidence before ſuch juſtice, ſhall forfeit twenty ſhillings, to be levied and paid in ſuch manner, and by ſuch means as are herein before directed as to other penalties."

Penalty on witneſſes not obeying ſummons. N. B. This penalty is but ſmall, and might defeat the intention of the act; for by the witneſs paying 20s. the offender may chance to eſcape the payment of 2, 4 or 6l. beſides charges. But there is a clauſe in the ſtatute of 26 Geo. 2. c. 31. which impoſes on the like-offence a penalty of 10l. 1 Burn 24.

How perſons aggrieved may appeal.

† *Sect.* 42. But by par. 25. "Perſons aggrieved by the c
"viction or judgment of any juſtice or juſtices of the peace, f
"any of the offences aforeſaid, and ſhall give ſecurity to the ſ
"tisfaction of ſuch juſtice, *&c.* for payment of penalty, co
"and expences, to be expreſſed in the warrant of diſtreſs on ſu
"conviction, may appeal to the next quarter ſeſſions, unleſs t
"ſame be held within ſix days or leſs next after ſuch convictio
"and in that caſe to the juſtices aſſembled at the next ſeſſions a
"ter ſuch ſeſſions, and not afterwards: and the judgment
"ſuch ſeſſions ſhall be final and concluſive. And if ſuch appe
"be frivolous and vexatious, the party grieved by the ſame ſha
"have coſts, *&c.* not exceeding 5l."

N. B. There ſeems to be a miſtake in ſetting forth that the coſts ſhall be expreſſed in the warrant of diſtreſs; for no power of diſtreſs is given: The meaning ſeems to have been that the ſame ſhall be expreſſed in the conviction; as ſpecified in t form preſcribed by the act. 1 Burn 25. But by 9 Geo. 3. c. 6. this act ſhall not exte to alter any acts made ſince the 8 Geo. 2. c. 18. relating to the ſelling of ſpirituous quors by retail without licence.

Salkeld 45.

Publicans are not to encourage tippling in their houſes.

Sect. 43. Alſo it is enacted by 1 Jac. 1. c. 9. and 4 Jac. c. 15. and 21 Jac. 1. c. 7. and 1 Car. 1. c. 4. "That if any in
"keeper, victualler, or alehouſe-keeper, or any keeper of
"tavern, or one who ſells wine in his houſe, and alſo keeps
"inn, or victualling in his houſe, do permit or ſuffer any perſo
"whether ſuch perſon be an inhabitant of the place where ſu
"inn, *&c.* ſhall be, or not to continue drinking or tippling in a
"inn or victualling-houſe, *&c.* other than ſuch as ſhall be i
"vited by any traveller, and ſhall accompany him only duri
"his neceſſary abode there; and other than labouring and hand
"craftſmen in cities, and towns-corporate, and market towns u
"on the uſual work-ing days, for one hour at dinner-time,
"take their diet in an alehouſe; and other than labourers a
"workmen, who for the following of their work by the day,
"by the great, in any city, town-corporate, market-town,
"village, ſhall for the time of their ſaid continuing in wo
"there, ſojourn, lodge, or victual in any inn, alehouſe, or oth
"victualling-houſe; or other than for urgent and neceſſary o
"caſions, to be allowed by two juſtices of peace, That th
"every ſuch inn keeper, *&c.* ſhall forfeit ten ſhillings to the u
"of the poor of the pariſh where ſuch offence ſhall be committed
"the ſame offence being viewed and ſeen by any mayor, baili
"or juſtice of the peace within their ſeveral limits, or found b
"verdict on a trial upon an indictment at aſſizes, ſeſſions,
"court-leet, or proved by the oath of (a) one witneſs to be take
"before any mayor or bailiff, *&c.* or any one juſtice of the peac
"or by the voluntary confeſſion of any offender, after which co
"ſeſſion the oath of ſuch offender ſhall be taken, and be a ſuffic
"ent proof againſt any other offending at the ſame time."

4 Jac. 1. 5.

(a) 21 Jac. 1. 7.

Sect.

Sect. 44. And it is farther enacted by the ſaid ſtatute of 1 Jac. 1. c. 9. par. 3. "That the ſaid penalty of ten ſhillings ſhall "be levied by the conſtables or church-wardens of the pariſhes "where the offence ſhall be committed, by way of diſtreſs, and "for default of ſatisfaction within ſix days, the ſame to be pre-"ſently appraiſed and ſold, and the ſurpluſage to be delivered "to the party of whom the diſtreſs was taken, and for want of "ſufficient diſtreſs the party offending to be by the ſaid mayor, "&c. committed to the common gaol, there to remain till the "the ſaid penalty be paid. And if the ſaid conſtables or church-"wardens do neglect their duty in levying the ſaid penalties, or "in default of diſtreſs do neglect to certify the ſame within "twenty days to the ſaid mayor, &c. every perſon ſo offending "ſhall forfeit forty ſhillings, to the uſe of the poor of the pariſh "where ſuch offence ſhall be committed, to be levied by diſtreſs "of goods, by warrant from any one juſtice of peace, &c. to be "taken and detained ſix days; within which, if payment be not "made, the ſame goods to be appraiſed and ſold, &c."

How the penalty for ſo doing is to be levied.

Sect. 45. But it provided by the ſaid ſtatute of 1 Jac. 1. c. 9. "That the puniſhment of ſuch as ſhall offend againſt the "ſame, within either of the two univerſities, or the precincts "or liberties of the ſame, ſhall be done upon the offenders, and "juſtice miniſtered in this behalf; according to the intent of the "ſaid law, by the governors, magiſtrates, juſtices of the peace, "or other principal officers of either of the ſaid univerſities, to "whom in other caſes the adminiſtration of juſtice, and correc-"tion and puniſhment of offenders by the laws of this realm and "their ſeveral charters doth belong; and that no other within "their liberties, for any matter concerning the ſaid law contra-"ry to their ſeveral charters, do intermeddle, and that all pe-"nalties to be forfeited by virtue of the ſaid act, within either "of the univerſities or the liberties or precincts of the ſame, "ſhall be levied by the officers or miniſters of either of the ſaid "univerſities, to be from time to time in that behalf appointed "by the vice-chancellors thereof for the time being reſpectively, "and that all powers and authorities given by the ſaid act, ſhall "by the governors, magiſtrates, and principal officers above-"ſaid, of either of the ſaid univerſities, be duly executed with-"in either of the ſaid univerſities, &c."

How this offence may be puniſhed in the univerſities.

Sect. 46. And it is farther enacted by 4 Jac. 1. c. 5. and 21 Jac. 1. c. 7. "That whoever ſhall be drunk, and within (a) ſix "months after ſuch offence ſhall be convict thereof either on an "indictment at aſſizes or ſeſſions, or court-leet, or before any (b) "juſtices of peace in any county, or any juſtice of peace, or "other head officer in any city or town-corporate, upon view "or

The puniſhment of drunkards.

(a) 4 Ja. c. 1. 5 par. 11.

(b) 21 Jac. 1. 4 Jac. 1. 5.

" or confeſſion or by oath of one witneſs, ſhall forfeit 5*s.*
" be paid within one week after conviction, to the churc
" wardens of the pariſh where the offence ſhall be committe
" *&c.* and if ſuch perſon ſhall refuſe or neglect to pay the ſa
" forfeiture, the ſame ſhall be levied of his goods by warrant
" precept from the ſaid court, or judge before whom the ſa
" conviction ſhall be: and if the offender be not able to pay t
" ſaid ſum of 5*s.* he ſhall be committed to the ſtocks for eve
" offence, there to remain ſix hours; and if he ſhall be convict
(a) Par. 6. " a ſecond time of the like offence, he ſhall be bound to the
" good behaviour, with two ſureties in a recognizance of 1
" And if any conſtable or other inferior officer of the pla
" where the offence ſhall be committed, *&c.* do neglect the d
" correction of the ſaid offender, or the due levying of the ſa
" penalties, he ſhall forfeit 10*s.* to the uſe of the poor, *&c.*
" be levied by way of diſtreſs, by warrant from any mayo
" *&c.*"

The puniſhment of repeated tippling.

Sect. 47. And it is farther enacted by the ſaid ſtatute of Jac. 1. c. 5. and 21 Jac. 1. c. 7. and 1 Car. 1. c. 4. "That
" any perſon ſhall remain or continue drinking or tippling in an
(b) 1 Ca. 1. 4. " inn, victualling-houſe, alehouſe or (b) tavern, *&c.* whethe
(c) 21 Jac. 1. 7. " he be an (c) inhabitant of the place at the time of ſuch drink
" ing or not; and the ſame be viewed by any mayor, or othe
Supra Sect. 17. " head-officer or juſtice of peace, or confeſſed by the offende
" or proved by one witneſs in the manner preſcribed for th
" above mentioned offence of ſuffering tippling in public houſe
(d) 4 Jac. 1. 5. Par. 11. " unleſs it be in ſuch caſes as are excepted in the above mention
" ed act, relating to the ſaid offence of ſuffering tippling, *&c.*
Supra Sect. 20. " Every perſon ſo offending, and being convict within ſix months
" ſhall forfeit 3*s.* and 4*d.* to the uſe of the poor of the pariſh
" where the offence ſhall be committed, to be levied by way o
" diſtreſs in ſuch manner as the above mentioned forfeitures fo
" drunkenneſs are to be levied: And if any ſuch offender be no
" able to pay the ſaid forfeitures, any mayor, head officer, juſ-
" tice of peace, or court where any ſuch conviction ſhall be,
" may ſet him in the ſtocks for four hours."

Officers to be charged on oath to preſent ſuch offences.

Sect. 48. And it is farther enacted by the ſaid ſtatute of 4 Jac. 1. c. 5. ſ. 7. "That all conſtables, church-wardens, head-
" boroughs, tithingmen, aleconners and ſidemen ſhall in their
" ſeveral oaths incident to their ſeveral offices, be charged in like
" ſort to preſent the offences contrary to the ſaid ſtatute."

Eccleſiaſtical juriſdiction.

Sect. 49. But it is provided by the ſame ſtatute, par. 8.
" That nothing therein contained ſhall in any wiſe abridge the
" eccleſiaſtical

"ecclesiastical jurisdiction." And it is farther provided, par. 9. "That no offender, who hath once been punished for his offence "against any article of the said act, by any the ways or means "before limited, shall be eftsoons punished for the same offence "by any other ways or means."

Only one punishment.

Sect. 50. And it is farther provided, par. 10. "That nothing in the said act contained shall be prejudicial to either of "the universities, but that the chancellor, master, and scholars, "&c. may as fully use and enjoy all their jurisdictions, rights, "privileges, and charters, as before the said statute they had or "might have done; any thing in the said act to the contrary notwithstanding."

Not to prejudice the rights of the universities.

Sect. 51. And it is enacted by 7 Jac. 1. c. 10. "That if "any person being an alehouse-keeper, shall be lawfully convicted for any offence committed against any of the branches "of either of the said acts of 1 Jac. 1. c. 9. or 4 Jac. 1. c. 5. he "shall for the space of three years next ensuing the said conviction, be utterly disabled to keep any such alehouse."

Additional punishment.

Vide Ld. Raym, 1303. 1405.

† Sect. 52. It is also enacted by 30 Geo. 2. c. 24. s. 14. "That if any person or persons licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his, "her, or their house, or houses, or in any out-houses, ground, "or apartments thereto belonging, shall knowingly suffer any "gaming with cards, dice, draughts, shuffle board, mississippi, "or billiard tables, skettles, nine pins or with any other imple"ment of gaming by any journeymen, labourers, servants or "apprentices; on conviction by confession, or on the oath of one "witness, before any justice of the county or place within six "days after the offence committed, he shall forfeit 40s. and for "every like offence afterwards 10l. to be levied by warrant of "distress, and three fourths thereof paid to the poor and the "other fourth to the party on whose information the offender shall "be convicted."

Publicans not to suffer gambling by servants in their houses on penalty of 10l.

† Sect. 53. And it is further enacted, "That if any such "persons shall so game as aforesaid, and complaint thereof shall "be made on oath to a justice of the place, he may issue his "warrant to a constable to apprehend and carry such offender "before a justice of the county, and on conviction as aforesaid, "he shall forfeit from five to twenty shillings, or be committed to "labour."

And the parties who so game are liable to pay from 5 to 20l.

CHAP.

CHAPTER THE SEVENTY-NINTH.

Of MONOPOLIES.

FOR the better underſtanding the nature of the offence of procuring or making uſe of a monopoly, I ſhall conſider, First, What ſhall be ſaid to be a monopoly: Secondly, In what manner the procuring, or making uſe thereof, are reſtrained by the common law: Thirdly, In what manner by ſtatute.

3 Inſt. 181. Noy 182. 4 B. C. 159.

Sect. 1. As to the firſt point, it ſeemeth that a monopoly is an allowance by the king, to any perſon or perſons, of the ſole buying, ſelling, making, working, or uſing of any thing, whereby any perſon is ſought to be reſtrained from any freedom which he had before, or hindered from his lawful trade. (1).

(1) Monopoly and ingroſſing differ only in this, that the firſt is by patent from the king, the other by act of the ſubject between party and party, but are both equally injurious to trade and the freedom of the ſubject, and therefore are equally reſtrained by the common law. Skinner 169.

As to the ſecond point it ſeemeth, That the procuring or making uſe of ſuch monopolies, is reſtrained by the common law two ways. Firſt, By declaring all grants of this kind to be void. Secondly, By making thoſe who procure or make uſe of them liable to be fined.

3 Mod. 134. 127. 76. 11 Co. 87. 1 Roll. 4. 2 Roll. 174. Godb. 254. 2 Inſt. 63. 47. 10 Mod. 131. See Skinner 132 to 137. 165 to 173. 197 to 204. 223 to 226. Eaſt India Com. v. Sandys.

Sect. 2. And firſt it is ſaid, That all grants of this kind relating to any known trade are made void by the common law, as being againſt the freedom of trade, and diſcouraging labour and induſtry, and reſtraining perſons from getting an honeſt livelihood by a lawful employment, and putting it in the power of particular perſons to ſet what prices they pleaſe on a commodity, all which are manifeſt inconveniencies to the publick. (2)

(2) The king, and none but the king, Skinner 224. by his charter may conſtitute fraternities for the management of foreign and domeſtic trade. 8 Co. 125. who may make by-laws in reſtraint, if they be for the regulation of trade. See Com. Dig. by-law, b. 3 c, 3. Trade B. D. 1. D. 4. 10 Mod. 139.

(a) 2 R. Abr. 214. 3 Inſt. 182. 2 Inſt. 61.

Sect. 3. And upon this ground it hath been (a) reſolved, That the king's grant to any particular corporation of the ſole importation

importation of any merchandize is void, whether ſuch merchandize be prohibited by ſtatute or not. (3)

(3) Hence alſo it ſeems, that the king's charter, empowering particular perſons to trade to and from ſuch a place is void, ſo far as it gives ſuch perſons an excluſive right of trading and debarring all others: and it ſeems now agreed that nothing can exclude a ſubject from trade but an act of parliament. Ray. 489. Chan. Ca. 165. Vernon 127. Skinner 165. 3 Mod. 126. 3 Bacon 627. c. 3. Trade 4.

Sect. 4. And for the like reaſons alſo it hath been reſolved, That the grant of the ſole (a) ingroſſing of wills and inventories in a ſpiritual court, or of the ſole (b) making of bills, pleas and writs in a court of law, to any particular perſon, is void.

(a) 2 R. Abr. 214.
(b) 1 Jones 231. 2 R. Abr. 214. 3 Mod. 75. Vern. 120.

Sect. 5. Alſo it hath been adjudged, That the king's grant of the ſole making, importing, and ſelling of (c) playing cards, is void, notwithſtanding the pretence that the playing with them is a matter merely of pleaſure and recreation, and often much abuſed, and therefore proper to be reſtrained; for ſince the playing with them is in itſelf lawful and innocent, and the making of them an honeſt and laborious trade, there is no more reaſon why any ſubject ſhould be hindered from getting his livelihood by this than by any other employment.

10 Mod. 107. 131. 133.
(c) 11 Co. 84, 85, &c. Mod. 671. Noy 173, &c. 2 Inſt. 47. Vide 2 Atkins 484.

Sect. 6. But it ſeemeth clear, That the king may, for a reaſonable time, make a good grant to any one of the ſole uſe of any art invented or firſt brought into the realm by the grantee, as ſhall be ſhewn more at large in the 14th, 15th, and 16th ſections of this chapter. Alſo it ſeems to be the better opinion, That the king may grant to particular perſons the ſole uſe of ſome particular employments, (as of printing the holy ſcriptures and law books, (4) *&c.*) whereof an unreſtrained liberty might be of dangerous conſequence.

Noy 182, 183.
1 Mod. 256. 3 Keb. 792. 3 Mod. 75.

(4) The reaſons given are, that the invention of printing was new; that it concerned the ſtate, and was matter of public care; that it was in the nature of a proclamation, and none could make proclamations but the king. And as to law books, that the king has the making of judges, ſerjeants, and officers of law; and that law books are printed in a particular language and character, &c. 3 Bac. Abr. 627. in notis. 2 Ch. Ca. 67. Skinner 234. (1 Burn E. L. 401. Baſket's Caſe). 1 Vernon 120. 275. Carth. 90. Carter 89. 1 Mod. 256. 3 Cro. 227. 10 Mod. 107.

Sect. 7. Secondly, Alſo it is holden, That the procuring or making uſe of an unlawful monopoly is farther reſtrained by the common law, by ſubjecting thoſe who are guilty thereof to a fine and impriſonment for the offence, as being *malum in ſe*, and contrary to the ancient and fundamental laws of the kingdom. And it is ſaid, That there are precedents of proſecutions of this kind in former days; but I cannot find any modern inſtance thereof.

3 Inſt. 181. 2 Inſt. 47. 61.

Sect.

Sect. 8. As to the third point, *viz.* In what manner th procuring and making uſe of a monopoly are reſtrained by ſta tute, it is declared and enacted by 21 Jac. 1. c. 3. "Tha "all monopolies, and all commiſſions, grants, licences, cha "ters and letters patents to any perſon or perſons, bodies politi "or corporate whatſoever, of or for the ſole buying, ſelling "making, working, or uſing of any thing within this realm, o "Wales, or of any other monopolies, and all proclamation "inhibitions, reſtraints, warrants of aſſiſtance, and all othe "matters whatſoever any way tending to the inſtituting, ſtrength "ening, furthering, or countenancing of the ſame, or any o "them, are altogether contrary to the laws of this realm, an "ſo are and ſhall be utterly void, and of none effect, and i "nowiſe to be put in uſe or execution."

Sect. 9. And it is farther enacted, par. 2. "That, a "perſons, bodies politick and corporate whatſoever, ſhall b "diſabled and uncapable to have, uſe, exerciſe, or put in ur "any monoply, or any ſuch commiſſion, grant, or licence "*&c.* or other thing tending as aforeſaid, or any liberty, pow "er, or faculty, grounded or pretended to be grounded upo "them, or any of them."

Sect. 10. And it is farther declared and enacted, par. 3 "That all monopolies, and all ſuch commiſſions, grants, an "licences, *&c.* and all other things tending as aforeſaid, an "the force and validity of them, ought to be, and ſhall b "examined, heard, tried, and determined, by and according "to the common laws of this realm, and not otherwiſe."

Sect. 11. In the conſtruction of this clauſe it hath been hol den, That all matters of this kind ought to be tried in the court of common law only, and not at the council table, or in th court of Chancery, or any other court of like nature. (5)

3 Inſt. 182, 183.
2 Atk. 484.

(5) Chancery will never eſtabliſh a right claimed under a charter from the Crown, til there has been an action at law to try the right. 2 Atkins 484.—But it is the highe point of the Lord Chancellor's juriſdiction to cancel the king's letters patent under th Great Seal. 4 Inſt. 88. And where a patent is granted to the prejudice of the ſubject the king of right is to permit him upon his petition to uſe his name for the repeal of i in a *ſcire facias* at the king's ſuit. 3 Levinz. 221. Dyer 197. 8 Coke, Prince's Caſe 11 Coke 74. 2 Ventris 344. 6 Mod. 229. But queſtions concerning the effect and ex tent of letters patent can only be tried in the king's courts. Cowp. 173.

Sect. 12. And it is farther enacted, par. 4. "That if any "perſon ſhall be hindered, grieved, diſturbed, or diſquieted, "or his goods or chattels any way ſeized, attached, diſtrain "ed, taken, carried away, or detained, by occaſion or pre "text of any monopoly, or of any ſuch commiſſion, grant "or

" or licence, &c. or other matter or thing tending as afore-
" ſaid, and will ſue to be relieved in any of the premiſes, he
" ſhall have his remedy for the ſame at the common law, by
" action grounded on the ſaid ſtatute to be heard and deter-
" mined in the King's Bench, Common Pleas, or Exchequer,
" againſt the party by whom he ſhall be ſo hindered or grieved,
" &c. or by whom his goods ſhall be ſo ſeized or attached,
" &c. wherein every ſuch perſon, which ſhall be ſo hindered
" or grieved, &c. or whoſe goods ſhall be ſo ſeized or attach-
" ed, &c. ſhall recover three times ſo much as the damages
" which he ſuſtained by means of ſuch hindrance, &c. and
" double coſts; and in ſuch ſuits, or for the ſtaying or delaying
" thereof, no eſſoin, protection, wager of law, aid, prayer,
" privilege, injunction, or order of reſtraint, ſhall be in any-
" wiſe prayed, granted, admitted, or allowed, nor any more
" than one imparlance: and if any perſon ſhall, after notice that
" the action depending is grounded upon the ſaid ſtatute, cauſe
" or procure any action at the common law grounded thereon,
" to be ſtayed or delayed before judgment, by colour or means
" of any order, warrant, power, or authority, ſave only of the
" court wherein ſuch action ſhall be depending, or after judg-
" ment ſhall cauſe or procure the execution to be ſtayed or de-
" layed, by colour or means of any order, warrant, power or
" authority, ſave only by writ of error or attaint, that then the
" ſaid perſon or perſons ſo offending ſhall incur a præmunire."

Sect. 13. It is ſaid, That the firſt branch of this laſt clauſe relating to the delaying of cauſes of this kind before judgment, not only extendeth to the Privy Council, Chancery, Exchequer Chamber, and the like, but alſo to thoſe who ſhall procure any warrant from the king for ſuch purpoſe; and it is ſaid, That the latter branch relating to the delaying of execution after judgment extendeth even to the judges of the court where the cauſe is depending. 3 Inſt. 183.

Sect. 14. But it is provided, par. 6. " That no declara-
" tion in the ſtatute mentioned ſhall extend to any letters pa-
" tents and grants of privilege for the term of fourteen years,
" or under, of the ſole working or making of any manner of
" new manufactures within this realm," (under which words manufactures newly brought into the realm from beyond ſea are included, though they were not new there) " to the true
" and firſt inventor and inventors of ſuch manufactures,
" which others, at the time of making ſuch letters patents
" and grants, ſhall not uſe, ſo as alſo they be not contrary
" to the law, nor miſchievous to the ſtate, by raiſing prices
" of commodities at home, or hurt of trade, or generally in-
" convenient; the ſaid fourteen years to be accounted from Salk. 447.

" the

" the date of the first letters patents, or grant of such privilege,
" but that the same shall be of such force as they should be, if
" the said act had never been made, and of none other."

3 Inst. 184. *Sect.* 15. It hath been resolved, That no new invention concerning the working of any manufacture is within the meaning of this exception, unless it be substantially new, and not barely an additional improvement of an old one.

3 Inst. 184. 10 Mod. 181. *Sect.* 16. Also it hath been holden, That a new invention to do as much work in a day by an engine, as formerly used to employ many hands, is not within the said exception, because it is inconvenient in turning so many labouring men to idleness. (6)

(6) Vide Arkwright's case.

3 Inst. 184. Godb. 125. *Sect.* 17. Also it seemeth clear, that no old manufacture in use before can be prohibited in any grant of the sole use of any such new invention.

Sect. 18. And it is farther provided, par. 7. " That no-
" thing in the said act contained shall extend to any grant or
" privilege, power, or authority whatsoever before the said
" act, made, granted, allowed, or confirmed by any act of
" parliament, so long as the same shall continue in force."

Sect. 19. And it is farther provided, par. 9. " That no-
" thing in the said act contained shall be in anywise prejudicial
" to any city, borough, or town corporate within this realm,
" concerning any grants, charters, or letters patents to them
" made, or concerning any custom used by or within them, or
" unto any corporations, companies, or fellowships of any art,
" trade, occupation, or mystery, or to any companies or socie-
" ties of merchants within this realm, erected for the mainte-
" nance, enlargement, or ordering of any trade or merchan-
" dize: but that the same charters, customs, corporations, &c.
" and their liberties and immunities shall be of such force and
" effect as they were before the making of the said act, and of
" none other, any thing before in the said act contained to the
" contrary in anywise notwithstanding."

Sect. 20. And it is farther provided, par. 10. " That
" nothing in the said act contained shall extend to any letters
" patents, or grants of privilege, concerning printing; nor
" to any commission, grants, or letters patents, concerning
" the digging, making, or compounding of saltpetre, or
" gunpowder,

"gunpowder, or the caſting or making of ordnance, or ſhot "for ordnance; nor to any grant or letters patents of any office "erected before the making of the ſaid ſtatute, and then in be- "ing, and put in execution, other than ſuch offices as had been "decried by proclamation: but that all ſuch grants, &c. ſhall "be of the like force and effect, and no other, as if the ſaid act "had never been made."

Sect. 21. But it is enacted by 16 Car. 1. c. 21. "That it "ſhall be lawful for all perſons, as well ſtrangers as natural "born ſubjects, to import any quantities of gunpowder whatſo- "ever, paying ſuch cuſtoms and duties for the ſame as by par- "liament ſhall be limited: and that it ſhall be lawful for all his "majeſty's ſubjects of this his realm of England, to make and "ſell any quantities of gunpowder at his pleaſure, and alſo to "bring into this kingdom any quantities of ſaltpetre, brimſtone, "or any other materials for the making of gunpowder: and that "if any perſon ſhall put in execution any letters patents, procla- "mation, edict, act, order, warrant, reſtraint, or other inhibi- "tion whatſoever, whereby the importation of gunpowder, ſalt- "petre, brimſtone, or other the materials afore mentioned, ſhall "be anywiſe prohibited or reſtrained, he ſhall incur a præmu- "nire."

1 Jac. 2. c. 8.
5 Geo. 1. c. 26.
11 Geo. 1. c. 23.
4 Geo. 2. c. 29.
15 Geo. 2. c. 32.
21 Geo. 2 c. 38.
29 Geo. 2. c. 16.

Sect. 22. And it is farther provided by the ſaid ſtatute of 21 Jac. 1. c. 3. ſ. 11, 12. "That nothing in the ſaid act contained "ſhall extend to any commiſſion or grant concerning the digging, "compounding, or making of allum, or allum mines, &c. nor "concerning the licenſing of the keeping of any tavern or ſelling "of wines, to be ſpent in the manſion-houſe, or other place, in "the tenure or occupation of the party ſelling the ſame; and a "farther proviſion is made in the latter part of the ſtatute, for "ſome particular grants to particular corporations and perſons, "as Newcaſtle upon Tyne, &c."

Sect. 23. But it is ſaid, That the ſaid clauſe relating to allum was needleſs, becauſe all ſuch mines belong of courſe to the perſons in whoſe grounds they are, and therefore no privilege concerning them can be granted but in the king's own ground.

3 Inſt. 185.

† *Sect.* 24. And for the encouragement of learned men to compoſe and write uſeful books, and to prevent their being ruined by the piracy of bookſellers, it is enacted by 8 Ann. c. 19. "That the author of any book or books, and his "aſſignee or aſſigns, ſhall have the ſole right and liberty of "printing and reprinting ſuch book or books for the term of "fourteen

Vide the caſe of Maſon v. Murray for publiſhing Gray's Poems.

N. B. A musical composition is a writing within this statute. Bach v. Longman. Cowper 623. But it is said that charts are not within this statute. per Ld. Mansfield, Sayer's case, Brown 83. An abridgment of any literary performance

"fourteen years, to commence from the day of first publish-
"ing the same, and no longer; and if any other person what-
"soever, within the time granted by this act, shall print, re-
"print, or import, any such book without the consent of the
"proprietor first obtained in writing, signed in the presence
"of two or more credible witnesses, or shall knowingly sell,
"publish, or expose to sale, any such book or books, without
"consent as aforesaid, the offender shall forfeit every sheet o
"the same to the proprietor, who shall forthwith damask o
"destroy the same, and also forfeit one penny for every shee
"found in the custody of such offender; half to the king, an
"half to the prosecutor, who will sue for the same in any of th
"courts at *Westminster*."

which ingeniously preserves the whole sense of the work, and thereby renders it a mor useful production, is held to possess original merit, and does not trench upon the proper ty of its first author. Loft 775. So also it is said that there may be originality in castin an index, or pointing out a ready method of finding a place in a map. 2 Brown's Chan cery Rep. p. 84. And qu. if a man makes a new survey of roads from actual mea surement.

Vide 15 Geo. 3. c. 54. s. 6.

† *Sect.* 25. And it is further enacted, par. 2. "That th
"act shall not extend to any book or books printed without suc
"consent, unless the title to the copy of the whole of such boo
"or books, and every volume thereof, shall before publicatio
"be entered in the register book of the company of Stationer
"in such manner as hath been usual, which register book sha
"at all times be kept in the hall of the said company, and un
"less such consent of the proprietor be in like manner entere
"as aforesaid, for every of which several entries, six pence sha
"be paid and no more; which register may be resorted to, an
"inspected without fee or reward; and the clerk of the sai
"company shall give a certificate under his hand of such en
"try, for which he shall receive six pence. And it is furthe
"enacted, That if the clerk of the said company refuse in th
"presence of two witnesses to make such entry and gran
"such certificate, he shall forfeit 20*l.* to the proprietor, wh
"in such case, notice being first duly given of such refusa
"by an advertisement in the Gazette, shall have the like be
"nefit as if such entry and certificate had been duly made an
"given."

† *Sect.* 26. And it is provided by par. 5. enforced by the
Geo. 3. c. 54. s. 6. "That nine copies of the whole of eac
"book or books, and every volume thereof, upon the best pa
"per, that shall be printed, published, or reprinted and pub
"lished with addditions, shall by the printer thereof, be actuall
"delivered to the warehouse-keeper of the said company
"Stationer

"Stationers, at the hall, before publication, for the use of the "libraries of the several universities, &c. on pain of forfeiting "besides the value of the said printed copies, the sum of five "pounds, for every copy not so delivered, as also the value of "the said printed copy not so delivered, and if not delivered "by the said warehouse-keeper to the universities accordingly "within ten days after demand, the offender shall forfeit 5l. "&c. But this act shall not prohibit the importation of foreign "books. Action to be brought in three months, defendants may "plead the general issue."

By 12 Geo. 2. c. 36. continued by 22 Geo. 3. c. 13. s. 4. whoever shall import or sell books first written and printed in this kingdom and reprinted abroad, shall forfeit 5l. and double the value of the books. But this act shall not extend to books containing any extracts from English authors &c. Vide also 27 Geo. 2. c. 18.

† *Sect.* 27. And it is further provided by the said statute, par. 11. "That after the expiration of the said term of fourteen "years, the sole right of printing or disposing of copies shall re-"turn to the authors thereof, if they are then living, for another "term of fourteen years." (7)

The contingent interest of authors.

(7) In the case of Millar v. Taylor, it was insisted, "That there is a *real* property remaining in authors, or in their assigns, after the publication of their works, independant of and not taken away or circumscribed by the above statute. No question perhaps ever underwent a more learned or elaborate discussion; or created on its several points a greater diversity in the opinions of the Judges. It was held by Lord Mansfield, Aston and Willes contra Yates, that authors and those claiming under them, possess as a common law right, not interrupted by the statute, a perpetuity in their works after publication. And the same doctrine was confirmed by decree in Chancery, in the case of Becket v. Donaldson. But on appeal to the House of Lords this decree was reversed, and the doctrine now established is that the common law right of authors and their assigns is interrupted by 8 Ann. c. 19. that they have the sole and exclusive copy right in perpetuity, after having published their compositions, but that they have it for fourteen years from the publication, and after the expiration of that term, the right parted with, returns to the authors, *if living*, or to their assigns, for another fourteen years." 5 Com. Dig. 570. 4 Burrow from 2303. to 2417. But if the author assigns by general words "all his interest, &c." in the copy right, he conveys not only his absolute interest for the first fourteen years, but his contingent interest also of the other fourteen years, which result to him, if living, upon the expiration of the first term. Carnan v. Bowles, in Chancery, Trin. 26 Geo. 3. Vide also Rennet v. Thompson, in the Exchequer.

† *Sect.* 28. And it is also enacted by 8 Geo. 2. c. 13. "That every person who shall invent and design, engrave, "etch, or work in mezzotinto, or chiaro oscuro, or from his "own works and invention shall cause to be designed "and engraved, etched or worked in mezzotinto or chiaro "oscuro, any historical or other print, shall have the sole "right of printing and reprinting the same, for the term of "fourteen years, to commence from the day of the first (1) "publishing thereof, which shall be truly engraved with he "name of the proprietor on each plate, and printed on every "such print; and if any person, within the time limited by "this act, shall engrave, etch, or work as aforesaid, or in "any other manner copy or sell, or cause to be engraved, "etched or copied and sold, in the whole or in part, by "varying, adding to, or diminishing from the main design, "or shall print, reprint, or import for sale any such print or "parts

Engravings.

(1) To secure the property under this act, the proprietor must engrave *both* his name *and* the day of first publishing the print, on the plate and print the same on the print, Sayer *qui tam* v. Dicey, 3 Wilson 60.

" parts thereof, without the conſent of the proprietor ſ
" had in writing, ſigned by him in the preſence of two witn
" ſes; or ſhall knowingly publiſh, ſell, or expoſe to ſale,
" otherwiſe in any manner diſpoſe of the ſame, &c. &c. ſ
" offender ſhall forfeit the plate and every impreſſion there
" and alſo five ſhillings for every print found in his cuſtody,
" ſold or expoſed to ſale by him, half to the king, half to t
" proſecutor, if ſued in three months. But this act ſhall n
" extend to the purchaſer of plates."—And by 17 Geo. 3.
57. proprietors of prints may bring action on the caſe, and r
cover damages and double coſts againſt perſons copying th
prints, in the whole or in part by varying, adding, or diminiſ
ing without conſent.

† *Sect.* 29. And by 15 Geo. 3. c. 53. " The univerſit
" in *England* and *Scotland*, and the colleges of *Eaton*, *Weſtm*
" *ſter*, and *Wincheſter* reſpectively, ſhall have for ever the ſ
" liberty of printing and reprinting, but it muſt be at th
" own printing preſs, all ſuch books as ſhall at any time her
" tofore have been, (or having not been heretofore publiſh
" or aſſigned) ſhall at any time hereafter be bequeathed
" otherwiſe given by the author or authors of the ſame reſpe
" tively, or the repreſentatives of ſuch author or authors to
" in truſt for the ſaid univerſities or colleges, or to or in tr
" for any college or houſe of learning within the ſame, unl
" the ſame have been or ſhall be given for any term of years
" other limited term. And whoever ſhall print or ſell the ſa
" contrary to this act ſhall, provided the books be enter
" within two months after the bequeſt, in the manner the a
" directs, forfeit the ſame, and alſo one penny for every ſhe
" one half to the king, the other to the proſecutor. But t
" univerſities may ſell copy right in like manner as any author

CHAPTER THE EIGHTIETH.

OF FORESTALLING, INGROSSING, AND REGRATING, AND OTHER OFFENCES OF THE LIKE NATURE.

FOR the better underſtanding the nature of Foreſtalling Ingroſſing and regrating, and other ſuch like offence I ſhall conſider, How ſuch offences are treated by the commo law. And how by ſtatute.

As to the first point, I shall consider: What is esteemed an offence of this kind by the common law. And how such offence is punishable by the common law.

Sect. 1. As to the first of these particulars it is said, That all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false (a) rumours or by (b) buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same (c) market, or by any other such like devises, are highly criminal at common law, and that all such offences antiently came under the general notion of forestalling, which included all kinds of offences of this nature.

(a) 43 Ass. 38. 3 Inst. 195, 196. B. Indictment, 40. Presentment 12.
(b) Crom. 18.
(c) Crom. 80.

Sect. 2. And surely there can be no attempt of this kind, but must be looked upon as a high offence against the publick, inasmuch as it so apparently tends to put a check upon trade to the general inconvenience of the people, by putting it out of their power to supply themselves with a commodity, without an unreasonable expence, which often proves extremely oppressive to the poorer sort, and cannot but give just cause of complaint to the richest.

Sect. 3. But it hath been resolved, That any merchant, whether he be a subject or a foreigner, bringing victuals, or any other merchandize into the realm, may sell the same in gross, but that no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, because by such means the price will be enhanced, for the more hands any merchandize passeth through, the dearer it must grow, because every one will make his profit of it; and if such practices were allowable, a rich man might ingross into his hands a whole commodity, and then sell it at what price he should think fit; which is of such dangerous consequence, that the bare ingrossing of a whole commodity with an intent to sell it at an unreasonable price, is an offence indictable at the common law, whether any part thereof be sold by the ingrosser, or not.

3 Inst. 196. Summary 152.
C. Car. 231, 232.

Sect. 4. And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf, perhaps for this reason, because by such means the market is in effect forestalled.

3 Inst. 197. Summary 152.

Sect. 5. As to the second particular, *viz.* In what manner offences of this kind are punishable by the common law; it is said, That by an antient statute the offender was to be grievously amerced for the first offence; for the second, to be condemned to the pillory: for the third, to be imprisoned; and

3 Inst. 195.

for the fourth to be compelled to abjure the vill: And th
ſeems to be no doubt, but that at this day all offenders of t
kind are liable to a fine and impriſonment, anſwerable to
heinouſneſs of this offence, upon an indictment at comm
law.

As to the ſecond point, *viz.* In what manner theſe offen
are treated by ſtatute, I ſhall conſider; what particular provi
ons have been made relating to this matter.

The particular proviſions of this nature are five-fold; 1. T
obliging of all victuallers to ſell at a reaſonable price. 2. T
allowing all foreigners free liberty of importing and ſelling v
tuals. 3. The giving the great officers of ſtate a power to
the price of victuals. 4. The prohibiting conſpiracies to ra
the price of victuals. 5. the prohibiting all foreſtalling, ingr
ſing, and regrating.

How butchers ſelling unwholeſome meat are to be puniſhed, vide 1 vol. Runnington's ſtatutes p. 187. c. 7. By 4. Hen. 7. c. 3. they ſhall not kill beaſts in walled towns. By 21 Hen. 8. c. 8, they ſhall not kill calves but within the time preſcribed. By 22 Hen. 8. c. 6. they are prohibited fr keeping tan-houſes. By 1 Jac. 1. c. 22. they are not to kill calves under five weeks o By 5 Ann. c. 34. ſ. 2. they are not to ſell cattle to one another in London. By 7 Ann 6, may ſell dead calves or ſheep.

Sect. 6. The firſt of the ſaid proviſions depends upon
Edw. 3. c. 6. by which it is enacted, "That butchers, fiſhmo
"gers, regrators, hoſtlers, brewers, bakers, poulterers, a
"other ſellers of all manner of victuals, ſhall be bound to ſ
"the ſame for a reaſonable price, having reſpect to the pr
"that ſuch victuals ſhall be ſold at in the places adjoining;
"that ſuch ſellers have moderate gains, reaſonably to be requ
"ed, according to the diſtance of the place from whence t
"ſaid victuals be carried; on pain to forfeit double the valu
"*&c.* And the chief officers of towns are required to ſee t
"ſtatute executed, on pain of paying the treble value of t
"thing ſold, *&c.*"

Sect. 7. The ſecond of the above-mentioned proviſions d
pends upon 6 Rich. 2. c. 10. and 11 Rich 2. c. 7. and 1 He
4. c. 17. by which it is enacted. "That all manner of aliens, b
"ing of the amity of the king, coming into any town of the rea
"with fiſh, or other victual, ſhall be under the king's eſpeci
"protection, and may cut their fiſhes and victuals in pieces, a
in part, or in all, at retail, or in groſs, as to them beſt ſha
ſeem, to ſell and make their profit, *&c.*"

And it is farther enacted by 14 Hen. 6. c. 6. "That if a
"man diſturb any alien to ſell his fiſh in groſs, or at retail,
"part or in whole, contrary to the above mentioned ord
"nances, and thereof be duly attainted at the ſuit of the kin
"or of the party, he ſhall forfeit 10*l.* *&c.*"

Se

Sect. 8. The third of the above mentioned provisions depends upon 25 Hen. 8. c. 2. by which it is enacted, "that "to remedy the frequent rise of the price of cheese, butter, capons, hens, chickens, and other necessary victuals for man's "sustenance, by ingrossing and regrating the same; the Lord "Chancellor and other high officers of state, *&c.* may, upon "complaint of any enhancing of the prices of such victuals "without ground or reasonable cause, in any part of the king's "dominions, set and tax reasonable prices of such victuals: "And that after proclamation made of such prices, all farmers, "owners, broggers, and all other victuallers whatsoever, having "or keeping any such victuals to the intent to sell shall sell the "same to such of the king's subjects as will buy them at such "prices as shall be taxed by such proclamation, under the pains "to be limited in the said proclamation."

Vide also 24 Hen. 8. c. 3. 25 Hen. 8. c. 1. 27 Hen. 8. c. 9. which enjoin that butchers meat shall be sold by the pound, &c. But by 33 Hen. 8. c. 11 it may be sold by weight or otherwise.

Sect. 9. But it is provided, "That the officers of cities, "borought, or town-corporate, and all other persons having authority to set prices of such victuals, may set such "prices in such manner as if the said act had not been "made."

Sect. 10. The fourth of the above mentioned provisions depends upon 2 and 3 Edw. 6. c. 15. by which it is enacted, "That if any butchers, brewers, bakers, poulterers, cooks, "coster-mongers or fruiterers, shall conspire, covenant, promise, or make any oaths, that they shall not sell their victuals but at certain prices; or if any artificers, workmen or "labourers, do conspire, covenant, or promise together, or "make any oaths, that they shall not make or do their works, "but at a certain price or rate; or shall not enterprise, or take "upon them to finish what another hath begun, or shall do but "a certain work in a day, or shall not work but at certain hours "and times; every such person so conspiring, *&c.* shall forfeit "for the first offence 10*l.* and if he pay not the same within 6 "days, shall suffer 20 days imprisonment; and for the second "offence shall forfeit 20*l.* *&c.* and for the third, 40*l.* *&c.* And "if any such conspiracy, covenant, or promise be made by any "society, brother-hood, or company, of any craft, mystery or "occupation of the victuallers above mentioned, with the presence or consent of the more part of them, that then immediately upon such act of conspiracy, *&c.* over and besides the "particular punishment before appointed, their corporation "shall be dissolved; and that the said offences shall be determined at the assizes, sessions of the peace, or court-leet."

Vide 5 Eliz. c. 4.

† But by 2 Geo. 3. c. 14. "No brewer, innkeeper, victualler or other retailer of strong beer or ale shall be "sued

" fued impleaded or moleſted by indictment, information, po
" pular action or otherwiſe, for advancing the price of ſtron
" beer or ale in a reaſonable degree. And it is alſo enacte
" that if any brewer, innkeeper, victualler or retailer of be
" or ale ſhall mix or cauſe, or ſuffer to be mixed in any veſſe
" tub, meaſure, or otherwiſe, any ſtrong beer, ale or ſtron
" worts with any ſmall beer or ſmall worts or with water a
" ter the gauge of ſuch ſtrong beer, ale, or ſtrong wor
" ſhall have been taken by an officer of exciſe he ſhall forfe
" fifty pounds."

† *Sect.* 11. The fifth of the above mentioned proviſions, *vi*
the prohibiting all foreſtalling, ingroſſing and regrating, d
pended chiefly upon 3 and 4 Edw. 6. c. 21. 5 and 6 Edw.
c. 14. altered by 5 Eliz. c. 5. ſ. 13. 5 Eliz. c. 12. and 13 Eli
c. 25. ſ. 31. But it is recited by 12 Geo. 3. c. 71. "That
has been found by experience that the reſtraints laid by ſever
ſtatutes upon the dealing in corn, meal, flour, cattle and ſu
dry other ſorts of victuals by preventing a free trade in the ſa
commodities, have a tendency to diſcourage the growth and
enhance the price of the ſame, which ſtatutes if put in executio
would bring a great diſtreſs upon the inhabitants of many par
of this kingdom and in particular upon thoſe of the cities of Lo
don and Weſtminſter, and thereupon it is enacted that the "
" and 4 Edw. 6. c. 21.—The 5 and 6. Edw. 6. c. 14.—The
" and 3 Philip and Mary, c. 3.—The 5 Eliz. c. 5. and c. 12.
" The 15 Car. 2. c. 8. and ſo much of 5 Ann c. 34. as relat
" to butchers ſelling cattle alive or dead, within London an
" Weſtminſter and within 10 miles thereof, and alſo all acts fo
" the better inforcement of the ſame, being detrimental to th
" ſupply of the labouring and manufacturing poor of this king
" dom ſhall be and the ſame are hereby declared to be re
" pealed."

2 Burn's Juſtice 231.

† *Sect.* 12. But as the ſtatute 5 and 6 Edw. 6. c. 14. par
ticularly deſcribes the ſeveral offences of foreſtalling, ingro
ſing, and regrating, which ſtill continue offences at commo
law, it may be of uſe to recite it, notwithſtanding it is repealed
as it contains a parliamentary deſcription of thoſe offences.

An indictment on the clauſe muſt charge expreſsly that the goods bought were *coming to the market to be ſold.*
1 Rolle's Rep. 124.

† *Sect.* 13. For it is enacted by par. 1. of the ſaid ſtatute
" That whoſoever ſhall buy or cauſe to be bought, any mer
" chandize, victual, or any other thing whatſoever comin
" by land or by water toward any market or fair to be ſold i
" the ſame, or coming toward any city, port, haven, creek
" or road of this realm or Wales, from any parts beyond th
" ſea to be ſold, or make any bargain in contract or promiſe fo
" th

"the having or buying of the ſame, or any part thereof ſo co-
"ming as is aforeſaid before the ſame ſhall be in the market,
"fair, city, or port, &c. ready to be ſold, or ſhall make any
"motion by word, letter, meſſage or otherwiſe to any perſon or
"perſons for the enhancing of the price or dearer ſelling of any
"thing above mentioned, or elſe diſſuade, move, or ſtir any one
"coming to the market or fair, to abſtain or forbear to bring or
"convey any of the things above rehearſed to any market, city,
"or port, &c. to be ſold ſhall be deemed.—A FORESTAL-
"LER."

† *Sect.* 14. And it is enacted by par. 2. "That whoſo- Vide Owen 135
"ever ſhall by any means regrate, obtain, or get into his hands
"or poſſeſſion in any fair or market, any corn, wine, fiſh, but-
"ter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine,
"pigs, geeſe, capons, hens, chickens, pidgeons, conies or other
"dead victual whatſoever, that ſhall be brought to any fair or
"market to be ſold, and do ſell the ſame again in any fair or mark-
"et holden in the ſame place or within 4 miles thereof ſhall be
"taken for—A REGRATOR."

† *Sect.* 15. And by par. 3. "Whoſoever ſhall ingroſs or
"get into his hands by buying, contracting or promiſe taking,
"other than by demiſe grant, or leaſe of land, or tithes, any
"corn growing in the fields or any other corn or grain, butter,
"cheeſe, fiſh, or other dead victual whatſoever, within the
"realm of England to the intent to ſell the ſame again ſhall be
"reputed—AN UNLAWFUL INGROSSER."

Sect. 16. In the conſtruction of the laſt mentioned clauſes the following opinions have been holden. I. That (a) ſalt is a victual within the meaning of it, not only becauſe it is of neceſſity of itſelf for the food and health of man, but alſo becauſe it ſeaſoneth and maketh wholeſome beef, pork, and other victuals, in which reſpect it ſeemeth itſelf to come under the notion of victual, and ſeemeth to be ſo underſtood by the makers of 13 Eliz. 12. c. 25. as appears from par. 21 of that ſtatute.

(a) Inſt. 195. Sum. 152. Cro. Car. 231.

Sect. 17. II. That (b) ſuch victual only as is neceſſary for the food of man is within the purview of it; and therefore that apples, and cherries, and ſuch like fruits, are not within the intent of it; for the words are, corn, or grain, butter, cheeſe, fiſh, or other dead victuals, which words are ſaid to import the ſame as if it had been ſaid, or other dead victuals of like quality: Alſo it is ſaid, That there is not any thing prohibited within the ſtatute, but what hath a proviſo, how in ſome kind it might be brought; and therefore ſince there is not any ſuch proviſo for apples, that they never were intended

(b) 3 Inſt. 195. Sum. 152. Cro. Car. 231. Owen 135. Cro. Jac. 214.

(a) C. Car. 231
(b) 3 Inſt. 196. Sum. 152. Con. Owen 135 1 Roll 12.

intended to be reſtrained: And agreeably hereto it hath bee holden, That neither (a) hops nor (b) malt are within th meaning of the ſtatute.

(c) Bridg. 5, 6. Owen 135.
(d) Moor 595. Cro. Car. 231. Con Owen 135.

Sect. 18. III. That the buying of corn, with an intent make (c) ſtarch of it, and then to ſell it, is not within the ſa clauſe, becauſe it is not bought to be ſold again in the ſame n ture in which it was bought, but to be firſt altered by a trade ſcience, and then ſold again. And for the like reaſon it ſeeme to be the better (d) opinion, That the buying of corn in orde

(e) C. Car. 231 3 Inſt. 196. See c. 33. ſ. 15, 18. Con. Owen 135

to make meal of it, and then to ſell it, is no way within the ſa clauſe; and that the buying of (e) barly with an intent to mak it into malt, and then to ſell it, had no need of the exceptio made for it in the ſaid ſtatute.

(f) 1 Jon. 157.

Sect. 19. IV. That there is no neceſſity in an informatio or indictment grounded on the ſaid clauſe for ingroſſing any vi tual therein mentioned, to ſay (f) That the defendant did n come by it by a demiſe of land, &c. but that the defendant, he have any ſuch matter to alledge in his defence, may give in evidence.

2 Leon. 35.

Sect. 20. V. That in every ſuch information, &c. the word of the ſtatute muſt be preciſely purſued, and therefore that it not ſufficient to ſay, That the defendant bought ſo much corn &c. becauſe the words are, "ſhall ingroſs, or get into his hand "by buying, &c."

Sect. 21. And it is farther enacted by the ſaid ſtatute of 5 an 6 Edw. 6. c. 14. par. 4, 5, 6. "That whoever ſhall offend i "any of the things before recited, and be thereof duly convicted "ſhall for the firſt offence ſuffer impriſonment for two month "and forfeit the value of the goods ſo by him bought or had "and for the ſecond offence ſhall ſuffer impriſonment for on "half year, and forfeit the double value of the goods, &c. an "for the third offence ſhall be ſet on the pillory, and forfeit a "his goods, and be committed to priſon during the king's plea "ſure."

2 Bulſ. 317. Cro. Car. 381. 6 Modern 32. Vide alſo Cro. Car. 314. 1 Roll. 11, 12. 1 Jones 320.

Sect. 22. And from hence it ſeems clearly to follow, a well as from the general rules of law, That no information for any of the above mentioned offences againſt the ſaid ſta tute, can be good, without ſhewing in certain the quantity o the thing in relation to which the defendant is ſuppoſed t have incurred the penalty, not only becauſe otherwiſe the judg ment to be given on ſuch an information can never be pleaded in bar of any other, becauſe it cannot appear that both o them were brought for the ſame thing, but alſo becauſe i cannot appear to the court what forfeiture the defendan ought

ought to incur, unleſs the extent of the offence, which is to be the meaſure of it, be ſpecially ſet forth: And for theſe reaſons it hath been adjudged, That an information for ingroſſing corn, the quantity whereof is expreſſed by the word *cumulus* only, is not good; yet it is ſaid, That an indictment for ingroſſing *magnam quantitatem frumenti*, is ſufficient.

APPENDIX THE FIFTEENTH.

Of REGULATING the PRICE of VICTUALS, &c.

THE ſtatutes againſt the offences of foreſtalling, ingroſſing, and regrating contained particular exceptions to the general reſtraints which they impoſed. Theſe exceptions related to corn, butter, cheeſe, cattle, beer, cyder, mum, fiſh, wine, oil, ſugar, ſalt, fiſhmongers, victuallers, butchers, poulterers, badgers, drovers, leſſors, ſhipping and caſtles, and towns-corporate. Of the foregoing catalogue thoſe exceptions which relate to fiſh, fiſhmongers, victuallers, butchers, poulterers, leſſors, ſhipping and caſtles and towns-corporate are repealed. But as the intention of the legiſlature both in enacting and in repealing theſe ſtatutes, in accommodation to the emergencies of different periods of time, was to regulate the price of victuals, and to prevent them from being exorbitantly raiſed upon, or improperly introduced to the public, by the reſpective dealers therein; I ſhall endeavour to collect the ſeveral ſtatutes which relate to the regulation under the following arrangement.

1. As to the meaſure of corn.
2. As to bread.
3. As to beer.
4. As to butter and cheeſe.
5. As to cattle and butchers.
6. As to fiſh.
7. As to bacon and pork.
8. As to hay and ſtraw.
9. As to fruit.
10. As to honey and wax.
11. As to the meaſure of coals.

N. B. For the regulation of wood cut up for fuel vide 43 Eliz. c. 14. 9 Ann c. 15. and 10 Ann. c. 6.

Sect

† *Sect.* 1. And first. As to the measure of corn. It is ena
ted by 22 Car. 2. c. 8. s. 2. "That whoever shall sell any s
"of corn or grain, ground or unground, or any kind of sa
"usually sold by the bushel, by any other, than by Winches
"measure, marked in his majesty's exchequer, and sealed as t
"act directs, containing eight gallons to the bushel and no mo
"or less, and the said bushel stricken even by the wood or bri
"of the same by the seller, shall forfeit 40*s.* for every offenc
"on conviction, before one justice, by one witness; to be levi
"by the church-wardens, *&c.* by distress and sale; and in d
"fault imprisonment till paid."

† *Sect.* 2. And by par. 3. "If any mayor or other hea
"officer shall knowingly permit the same, on conviction at th
"sessions, he shall forfeit 5*l.* half to the prosecutor and ha
"to the poor by distress, or imprisonment till paid."

† *Sect.* 3. And it is further enacted, by 22 and 23 Car. 2
c. 12. "That whoever shall sell or buy any corn ground o
"unground or salt by the bag without measuring being there
"unto required or in any other manner than as above directe
"and that without shaking of the said bushel or measure b
"the buyer, shall forfeit beside the above penalty, all the corn
"grain or salt bought or sold contrary to this act, or the va
"lue thereof, to the party complaining."

N. B. Notwithstanding these statutes the measure of corn differs in any places the bushel being greater in one place than another, and it is said that an ancient and uninterrupted custom, for this is good. Barlow, 578.

† *Sect.* 4. And it is further enacted, par. 3. "That the
"proof shall lie upon the defendant to make it appear by the
"oath of one witness that he sold or bought the same lawfully,
"or if he fail he shall forfeit as before mentioned, and which
"shall be distributed by the justice, half to the poor and half to
"the informer." (1)

(1) For the mode by which the averaged price of corn is to be ascertained, vide 10 Geo. 3. c. 39. And for the same in London and Essex 21 Geo. 3. c. 50. For regulations respecting its importation 22 Car. 2. c. 13. 15 Car. 2. c. 7. 5 Geo. 2. c. 12. 6 Geo. 3. c. 17. 13 Geo. 3. c. 43. 16 Geo. 3. c. 39. 18 Geo. 3. c. 25. 19 Geo. 3. c. 29. For regulating its exportation, vide 1 W. and M. c. 12. 1 Geo. c. 7. 11 Geo. 2. c. 22. 13 Geo. 3. 43. s. 5. 14 Geo. 3. c. 64. 14 Geo. 3. c. 5. and 11 and 26. 16 Geo. 3. 37. 18 Geo. 3. c. 16.

General assize and price of bread.

† *Sect.* 5. Secondly. As to Bread, it is enacted, by 31 Geo. 2. c. 29. par. 2. "That the court, or persons here-
"in authorised to set the assize and weight of bread, and the
"price for the same shall so do as often as they shall think pro-
"per; and that in every assize, respect shall be had, to the price
"which the grain, meal, or flour, shall bear in the public mark-
"ets, in or near the place for which such assize shall be set; ma-
"king reasonable allowance to makers for their charges and pro-
"fit."

Sect.

† *Sect.* 6. And it is further enacted by par. 3. "That where "an aſſize ſhall be ſet no perſon ſhall there ſell bread, except "wheaten and houſehold, otherwiſe brown bread, and ſuch "other ſort as ſhall be publickly allowed by the court, or per-"ſons aforeſaid; but where it hath been uſual to make bread "with the meal of rye, barley, oats, beans, or peaſe, or with "the meal of any ſuch different ſorts of grain mixed together, "or the court of perſons ſhall allow ſuch bread to be made, ſuch "bread ſhall and may be there made and ſold; and offenders "on conviction by confeſſion, or the oath of one witneſs, before "any magiſtrate within his juriſdiction, ſhall forfeit not exceed-"ing forty nor leſs than twenty ſhillings."

An aſſize ſet, no other ſort of bread (wheaten and houſehold excepted) to be made for ſale; under penalty of forfeiting not exceeding 40s. nor leſs than 20s.

† *Sect.* 7. By par 4. "The aſſize and weight of the ſeveral "ſorts of bread for ſale, and the price ſhall be ſet and aſ-"certained according to the following tables marked No. 1. "and 2.

Aſſize and price to be according to the tables.

N. B. Part the firſt, or the aſſize table contains the price of the buſhel of wheat Wincheſter meaſure, from 2s. 9d. to 14s. 6d. the buſhel, the allowance of the magiſtrates or juſtices to the baker, for baking being included. So that (for example) if the price of wheat in the market is 5s. the buſhel and the magiſtrates allow 1s. 6d. the buſhel to the baker for baking, find 6s. 6d. and even therewith will be found the weights of the ſeveral loaves; but if the price in the market is 3s. and the allowance 1s. then the weight of the loaves will be found even with 4s.

N. B. Part the ſecond, or the priced table, contains the price of the buſhel of wheat, Wincheſter meaſure from 2s. 9d. to 14s. 6d. the buſhel the allowance for baking being included; and alſo the prices of the peck, half peck, and quartern, wheaten and houſehold loaves, ſo that (for example) if the price of wheat in the market is 5s, the buſhel, the magiſtrate allow 1s. 6d. for baking, find 6s. 6d. and even therewith will be found the price of the ſeveral loaves.

It was thought ſufficient to inſert the weight of a penny-loaf, as the weight of all other loaves may thereby be eaſily calculated.

TABLE

TABLE No. I.

OF BREAD MADE OF WHEAT.

Price of the bushel of wheat and baking.	Weight. The penny loaf.				Prized Bread. Quarter loaf.				Halfpeck loaf.				Peck loaf.			
	Wheaten		Houſhold		Wheaten		Houſhold		Wheaten		Houſhold		Wheaten		Houſhold	
s. d.	oz.	dr.	oz.	dr.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
2 9	22	4	29	4	0	3¼	0	2¼	0	6¼	0	4¾	1	0½	0	9
3 0	20	4	27	1	0	3½	0	2½	0	7	0	5¼	1	1¾	0	10
3 3	18	9	25	4	0	3¾	0	2¾	0	7½	0	5½	1	3	0	11
3 6	17	6	23	3	0	4	0	3	0	8	0	6	1	4	1	0
3 9	16	6	21	6	0	4¼	0	3¼	0	8½	0	6½	1	5	1	1
4 0	15	4	20	4	0	4½	0	3½	0	9	0	6¾	1	6¼	1	1
4 3	14	4	19	1	0	4¾	0	3.	0	9¾	0	7¼	1	7½	1	2
4 6	13	9	17	15	0	5	0	3¾	0	10¼	0	7¼	1	8½	1	3
4 9	12	12	17	1	0	5½	0	4	0	10¼	0	8	1	9¼	1	4
5 0	12	1	16	6	0	5¾	0	4¼	0	11½	0	8½	1	11	1	5
5 3	11	9	15	7	0	6	0	4	1	0	0	9	2	0	1	6
5 6	11	2	14	10	0	6¼	0	4¾	1	0½	0	9½	2	1	1	7
5 9	10	8	14	4	0	6½	0	5	1	1¼	0	9¾	2	2½	1	7½
6 0	10	2	13	9	0	7	0	5¼	1	1¾	0	10¼	2	3½	1	8½
6 3	9	11	13	1	0	7¼	0	5½	1	1¼	0	10¾	2	4¾	1	9½
6 6	9	4	12	10	0	7½	0	5½	1	3	0	11	2	6	1	10
6 9	9	0	12	1	0	7¾	0	5¾	1	3½	0	11½	2	7	1	11
7 0	8	11	11	9	0	8	0	6	1	4	1	0	2	8	1	2
7 3	8	7	11	2	0	8¼	0	6¼	1	4	1	0½	2	9	2	1
7 6	8	3	10	11	0	8	0	6½	1	5½	1	1	2	10	2	2
7 9	7	14	10	6	0	8¼	0	6¾	1	5	1	1½	2	11¼	2	2½
8 0	7	10	10	2	0	9¼	0	6¾	1	6¾	1	1¾	3	0½	2	3½
8 3	7	5	9	15	0	9½	0	7	1	7	1	2	3	2	2	4
8 6	7	2	9	9	0	9¾	0	7¼	1	7½	1	2½	3	3	2	5
8 9	6	15	9	4	0	10	0	7½	1	8	1	3	3	4	2	6
9 0	6	13	8	15	0	10¼	0	7¾	1	8½	1	3½	3	5	2	7
9 3	6	9	18	12	0	10¼	0	8	1	9	1	3¾	3	6¼	2	7½
9 6	6	7	8	8	0	10¾	0	8¼	1	9¾	1	4¼	3	7	2	8½
9 9	6	4	8	5	0	11	0	8¼	1	10¼	1	4¾	3	8½	2	9½
10 0	6	1	8	2	0	11½	0	8	1	11	1	5	3	10	2	10
10 3	5	15	7	15	0	11¾	0	8¾	1	11½	1	5½	3	11	2	11
10 6	5	13	7	12	1	0	0	9	2	0	1	6	4	0	3	0
10 9	5	11	7	9	1	0¼	0	9¼	2	0½	1	6¼	4	1	3	1
11 0	5	9	7	5	1	0½	0	9	2	1	1	7	4	2	3	2
11 3	5	6	7	3	1	0¾	0	9¾	2	1¾	1	7	4	3¼	3	2½
11 6	5	5	7	1	1	1	0	10	2	2¼	1	7	4	4½	3	3½

Price of the bushel of wheat & baking.	Weight. The penny loaf.				Prized Bread. Quartern loaf.				Half peck.				Peck loaf.			
	Wheaten		Houſhold		Wheaten		Houſhold		Wheaten		Houſhold		Wheaten		Houſhold	
s. d.	oz.	dr.	oz.	dr.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
11 9	5	2	6	15	1	1½	0	10	2	3	1	8	4	5	3	4
12 0	5	1	6	13	1	1¾	0	10¼	2	3½	1	8½	4	7	3	5
12 3	4	15	6	10	1	2	0	10½	2	4	1	9	4	8	3	6
12 6	4	14	6	8	1	2¼	0	10¾	2	4½	1	9½	4	9	3	7
12 9	4	13	6	5	1	2½	0	11	2	5	1	10	4	10	3	8
13 0	4	11	6	4	1	3	0	11¼	2	5¾	1	10¼	4	11½	3	8⅝
13 3	4	9	6	3	1	3¼	0	11¼	2	6½	1	10½	5	1	3	9
13 6	4	8	6	1	1	3½	0	11½	2	7	1	11	5	2	3	10
13 9	4	7	5	15	1	3¾	0	11¾	2	7½	1	11½	5	3	3	11
14 0	4	5	5	13	1	4	1	0	2	8	2	0	5	4	4	0
14 3	4	4	5	11	1	4½	1	0¼	2	8½	2	0½	5	5	4	1
14 6	4	3	5	9	1	5	1	0½	2	9	2	1	5	6	4	2

Note, The wheaten loaves are three-fourths of the weight of the houſehold loaves; and if the magiſtrates or juſtices ſhall think fit to allow of any white loaves of the price of one penny or two pence, they are to weigh at all times three-fourths of the weight of the wheaten loaves of the ſame price.

Note, The prices of the houſehold loaves are always three-fourths of the prices of the wheaten loaves; and where it ſhall be thought proper to allow of half quartern loaves, the prices of ſuch loaves (if ſold ſingly) are to be half a farthing higher than is allowed by this table, when it ſhall ſo happen that the farthing is ſplit.

And magiſtrates and juſtices within their reſpective juriſdictions being to ſet the aſſize and fix the price of the ſeveral loaves of bread having reſpect to the price which the grain, meal or flour ſhall bear in the markets. But no proviſion being made, how they ſhould know what price the reſpective ſorts of meal and flour ſhould be eſteemed to bear in proportion to the price of wheat they are therefore to take notice that the peck loaf of each ſort of bread is to weigh, when well baken, 17lb. 6oz. averdupois, and the reſt in proportion; and every ſack of meal or flour is to weigh 2 cwt. 2 qrs. net; from every ſack of meal or flour there ought to be produced, on the average, 20 ſuch peck loaves of bread; and, by obſerving the ſaid rule, magiſtrates and juſtices may at all times know if the baker hath more or leſs than the allowance they intend to give him.

TABLE

TABLE II.

OF BREAD MADE OF SEVERAL GRAINS.

The first column contains the prices of the bushel of Grain, baking included: which prices are adapted so as to serve either for the Winchester bushel of rye, of barley, of oats, of beans, of maslin *alias* miscellany, consisting two-thirds wheat and one third rye; the price of either of which bushel the market being known, the magistrates are to add the intended allowance thereto; the amount of which being found in column No. I. the weight which the several loaves ought to be of, will be found under the column No. II. and the price of the respective peck loaves (which are to weigh 17lb. 6oz. each) under No. I.

Note. Where bread is allowed at any time to be made for sale of pease only, the assize and price thereof are to be set and fixed from the bean column; and where bread is ordered to be made for sale of a coarse sort of maslin or miscellany grain, consisting of one-third rye, one-third barley, and one-third either pease or beans, the assize and price thereof are to be set and fixed from the barley columns.

Note also, That this table is framed for bread to be made of the whole produce of the said several grains, except the bran or hull thereof only.

No. I.	No. 2.					No. 3.				
Price of the bushel and baking.	Weight of the penny loaf.					Price of the peck loaf.				
	Rye.	Barley.	Oats.	Beans.	Maslin.	Rye.	Barley.	Oats.	Beans.	Maslin.
s. d.	oz. dr.	oz. dr	oz. dr	oz. dr.	oz. dr.	s. d.	s. d.	s. d.	s. d.	s.
1 0	62 8	67 8	31 4	83 12	70 0	0 4½	0 4½	0 9	0 3¾	0
1 3	50 0	54 0	25 0	67 0	56 0	0 5½	0 5½	0 11	0 4	0
1 6	41 10	45 0	24 14	55 12	46 10	0 6½	0 6¾	1 1¼	0 5	0
1 9	35 11	38 9	17 14	47 14	40 0	0 7¾	0 7½	1 3½	0 5¾	0
2 0	31 4	33 12	15 10	41 14	35 0	0 8¼	0 8½	1 5¾	0 6¾	0
2 3	27 13	30 0	13 14	37 4	31 2	0 10	0 9¾	1 7¼	0 7½	0
2 6	25 0	27 0	12 8	33 8	28 0	0 11	0 10½	1 10	0 8¾	0 1
2 9	22 11	24 9	11 6	30 7	25 6	1 0	0 11½	2 1	0 9¾	0 1
3 0	20 13	22 8	10 7	27 14	23 5	1 1	1 0½	2 2½	0 10½	1
3 3	19 4	20 12	9 10	25 12	21 8	1 2½	1 1½	2 4¾	0 10¾	1
3 6	17 13	19 4	8 15	23 15	20 0	1 3½	1 2½	2 6½	0 11¾	1
3 9	16 11	18 0	8 5	22 5	18 10	1 4½	1 3¾	2 8¼	1 0¾	1
4 0	15 10	16 14	7 13	20 15	17 8	1 5½	1 4½	2 11¼	1 1¾	1
4 3	14 12	15 14	7 6	19 11	16 8	1 6¾	1 5¾	3 0¾	1 2¾	1
4 6	13 14	15 0	6 15	18 10	15 9	1 8	1 7	3 2½	1 3	1
4 9	13 2	14 4	6 9	17 11	14 12	1 8¾	1 8	3 5¼	1 3¾	1
5 0	12 8	13 8	6 4	16 12	14 0	1 10	1 9	3 8	1 4¾	1
5 3	11 14	12 14	5 15	15 15	13 5	1 11¼	1 10	3 11	1 5¾	1
5 6	11 5	12 4	5 11	15 3	12 11	2 0¾	1 11	4 1	1 7½	1 1
5 9	10 13	11 12	5 7	14 9	12 2	2 1¾	2 0	4 3	1 7¾	1 1
6 0	10 6	11 4	5 3	13 15	11 10	2 2¾	2 1	4 5	1 8	2
6 3	10 0	10 13	5 0	13 6	11 3	2 3¾	2 2	4 7¼	1 8¾	2
6 6	9 10	10 6	4 13	12 14	10 12	2 5	2 3	4 9	1 9½	2
6 9	9 4	10 0	4 10	12 6	10 6	2 6	2 4	5 0	1 10¼	2
7 0	8 15	9 10	4 7	11 15	10 0	2 7	2 5	5 1½	1 11¼	2

† *Sect.* 9. And it is farther enacted par. 5. "That every assize shall be set in averdupoize weight, of sixteen ounces to the pound, and not troy weight, and in the several proportions directed by the tables, or as near as may be; and that the said tables shall extend as well to bread made with wheat mixed with other grain, as to bread made with other grains than wheat, publickly licensed to be made into bread; and that the assize of all such mixed bread shall be set and ascertained as near as may be, to the said tables."

Assize to be set in averdupoize weight, directed by the tables.

† *Sect.* 10. And it is further enacted, par. 6. "That the prices which the several kinds of grain, meal, and flour, shall, *bona fide*, sell for in *London*, in open and publick market, shall be certified on oath, on some certain day in every week, as the mayor and aldermen shall appoint, by the meal weighers of *London*, or such persons as the said court shall direct; and shall also on some certain day in every week, to be appointed by the said court, be entered by such persons in writing, and kept at the town clerk's office in the said city; And the next day after every such price shall be so certified, the assize and weight of all sorts of bread to be sold within the limits of their jurisdiction, and the price to be paid for the same, shall be set by the said court of mayor and aldermen, if the said court shall then sit, and if not, then by the mayor of the said city; and that the assize so set in *London* shall take place as the said court shall order, and be in force for *London* and the liberties thereof, and the weekly bills of mortality (the city of *Westminster* and liberties thereof the borough of *Southwark*, and weekly bills of mortality in the county of *Surry* excepted) until another assize in *London* shall be set; and that the assize so set, shall, with all convenient speed be made public in such manner as the said court of mayor and aldermen shall direct: but before any advance or reduction shall in any week be made by the said court or the mayor in the price of bread, the meal weighers or other persons shall leave in writing at the common hall of the company of Bakers in *London*, a copy of every return of the price of grain meal, and flour, which they shall make, and enter into such book as aforesaid, some time of the same day on which such meal weighers or other persons shall make every such return and entry; to the intent that the said company of Bakers may the morning of the next day after every such return and entry made, and before any assize shall be set, have an opportunity to offer to the mayor and aldermen, and if such court shall not then sit, to the mayor, all such objections as the said company of Bakers shall think fit against any advance or reduction being that day made."

Return to be made weekly to the court of aldermen of London, of the prices which the grain sells for to be entered in a book in the town clerk's office; the assize to continue till a new assize be set.

The meal-weighers are to leave at the Bakers Hall a copy of the returns.

† *Sect.*

The court and magiſtrates, &c. in other cities, towns, and boroughs, may, cauſe returns to be made; the prices to be entered and certified; the aſſize to be ſet within 2 days after; and to continue (not exceeding 7 days.)

† *Sect.* 11. And it is further enacted, par. 7. "That "court of mayor and aldermen of every other city, and wh "there ſhall be no ſuch court, or when the ſame ſhall not "the chief magiſtrate of every other city; and in towns cor "rate, or boroughs, the mayor, bailiffs, aldermen, or o "chief magiſtrate, or two juſtices where there ſhall be no "mayor, bailiffs, aldermen, or chief magiſtrates; ſhall ſe "rally and reſpectively, cauſe the reſpective prices which "ſeveral ſorts of grain, meal, and flour, proper to make br "allowed to be made in every ſuch other city, town corpor "borough, town, or place, ſhall, *bona fide*, ſell for, in "reſpective publick markets in or near to every ſuch ot "place, to be certified upon oath, unto ſuch magiſtrates "aforeſaid, in ſuch manner in every week, as any ſuch reſp "tive court or magiſtrates ſhall appoint; and the price ſo ce "fied ſhall be entered by the perſon who ſhall certify the ſa "in ſome book, kept by him for that purpoſe; and within t "days after the aſſize and weight of bread, ſhall be ſet by "perſons and in the juriſdictions as aforeſaid reſpectively, "ſame ſhall take place on ſuch day in every week, and be "force for ſuch time, not exceeding ſeven days from the ſett "of every ſuch aſſize, and ſhall be made public in ſuch m "ner, as ſuch magiſtrates as aforeſaid ſhall within their reſp "tive juriſdictions direct."

Two or more juſtices may ſet an aſſize and cauſe returns to be made.

† *Sect.* 12. And be it further enacted, par. 8. "That if a "two juſtices of counties ſhall ſet an aſſize, it ſhall be law "for them to cauſe the price which grain, meal, and flour, "to make bread, ſhall, *bona fide*, ſell for in the reſpective pu "lick corn markets, in or near the place or places reſpective "to be certified on oath (a) to them at their reſpective places "abode, in any ſuch county, on ſuch day in every week as th "ſhall appoint, by the reſpective clerks of the market, or ſu "other perſon as any ſuch two juſtices ſhall appoint; and t "the price of grain, meal, and flour, ſo returned, ſhall be ent "ed by the perſon who ſhall return the ſame, in ſome bo "kept by him for that purpoſe; and within two days after t "price and aſſize of bread may be by any two juſtices ſet for a "time not exceeding fourteen days from every ſetting thereo "and the aſſize which ſhall be ſo ſet, ſhall commence and "in force at ſuch time, and be made publick (b) in ſuch pla "or places, for which the ſame ſhall be ſo ſet, as the ſaid juſ "ces ſhall direct."

(a) For the form of the certificate which muſt be ſigned with the name of the perſon who returns it, vide the act, ſect. 11. And 2 Burn 243.

(b) For the form of the publication, vide the act, ſect. 12. And 1 Burn 244.

Bakers may ſee the returns that they may object to the aſſize.

† *Sect* 13. And be it further enacted, par. 9. "That a "baker ſhall have liberty, the day after every return ſhall b "made, and entered in the book, to ſee the entry witho "payi

"paying any thing; to the intent that he may have an opportunity "on the ſaid next day to offer to any ſuch court, mayor, bailiffs, "aldermen, or other chief magiſtrate or magiſtrates, or juſtices, "as aforeſaid, before any ſuch aſſize ſhall be ſet, ſuch objections "as any ſuch baker can reaſonably make againſt any advance or "reduction being made."

† *Sect.* 14. And be it further enacted, par. 9. "That no "maker of bread for ſale ſhall pay any fee or reward for any "aſſize of bread being ſet, altered, or publiſhed." Not liable to fees.

† *Sect.* 15. And it is further enacted, par. 11. "That the "half peck and quarter of a peck loaves of wheaten and houſe- "hold bread are to weigh in proportion to the weight a peck "loaf of wheaten or houſehold bread ought to weigh, and are "to be ſold according to the price a peck loaf of wheaten or "houſehold bread reſpectively is to be ſold, and whenever any "bread ſhall be ordered to be made with the meal or flour of "rye, barley, oats, peas, or beans, either alone, or mixed, the "aſſize of ſuch bread ſhall be made publick in ſuch manner as "the ſaid magiſtrate, who ſhall ſet ſuch aſſize, ſhall direct." Half peck and quartern loaves to weigh, and be ſold, in due proportion to the peck loaf.

† *Sect.* 16. And it is alſo enacted, par. 13. "That in places "where any ſixpenny, twelvepenny, and eighteenpenny loaves "ſhall be allowed, no peck, half peck, or quarter of a peck "loaves ſhall be permitted at the ſame time to be there made "or ſold, upon pain of any ſum not exceeding forty, nor leſs "than twenty ſhillings." Where bread of a certain denomination and value ſhall be ordered.

† *Sect.* 17. And it is further enacted, par. 14. "That if "the juſtices of any county or diviſion ſhall, at ſeſſions think fit "to fix, that any hundred, or other place in ſuch county or di- "viſion, ought to be conſidered as in any one particular hundred, "riding or diviſion, of ſuch county, riding, or diviſion, in order "that the aſſize of bread for ſuch particular hundred or place "may extend to or comprize ſuch other hundred or place it ſhall "be lawful for them ſo to do; but by ſo doing, no juſtice ſhall "be excluded from acting as a juſtice in any hundred, riding, "or diviſion of any ſuch county in which any ſuch particular "towns, diſtricts, or places ſhall lie, or the aſſize for them ſhall "be ſet." Seſſions may fix the juriſdiction of any place within a certain diſtrict.

† *Sect.* 18. And it is likewiſe enacted, par. 15. "That an "entry ſhall be made by every clerk of the market, or other "perſon, of every return, and of the rate at which the price, "aſſize, and weight of bread ſhall be ſet or fixed within the "juriſdiction Entry to be made by every clerk of the market, &c.

"jurisdiction of every such clerk of the market, or other [illegible] sons, which any inhabitant shall inspect without fee."

No alteration unless price of grain, shall vary 3d. in the bushel from the last return.

† *Sect.* 19. And be it also enacted, par. 16. "That after "assize shall be set, no alteration shall be made therein in a "subsequent week, either to rise the same higher, or to "the same lower, unless the price of wheat, or other gra "shall be returned as having rose three pence each bushel, o "than the last return made, or having fallen three pence e "bushel lower than the said last return; no provision be "made by the said assize tables for altering any assize upon s "an event."

Forfeiture of any meal weigher, clerk, &c. who shall neglect his duty, and any peace officer, who shall disobey.

† *Sect.* 20. And it is likewise enacted, par. 17. "That "any person appointed to certify or return the price of gra "meal, and flour, shall neglect any matters required to be do "by him, or shall designedly make any false certificate or r "turn; or if any peace-officer shall neglect to obey any w "rant in writing delivered to him under the hand and seal "any magistrate, or to do any other act requisite to be done "him, shall forfeit not exceeding five pounds, nor less th "twenty shillings."

Penalty for refusing to disclose the true prices of grain, meal, and flour, or for giving in a false or collusive price.

† *Sect.* 21. And it is further enacted, par. 18. "That in ea "any dealers in corn, grain, meal, or flour, on reasonable requ "by the meal weighers of London, or by the clerks of the ma "kets, or other persons, appointed to give in and certify th "prices of grain, meal, and flour, shall refuse to make know "the true real prices the several sorts of grain, meal, and flou "shall be *bona fide* bought at, or sold, by or for him, her, "them respectively, at any corn market, within the jurisdic "tion of any such persons aforesaid, or shall knowingly giv "in any false or untrue price of any grain, meal, or flou "bought or sold, or agreed so to be, or any price which ha "been made by any deceitful means, on being convicted by th "oath of one witness, or solemn affirmation, or on confession "shall forfeit not exceeding ten pounds, nor less than fort "shillings."

What shall be done where any false return shall be suspected.

† *Sect.* 22. And it is further enacted, par. 19. "That "any such court, magistrate, or justices, as aforesaid, wh "shall have ordered any return, shall, within three days af "ter such return made, suspect that the same was not tru "and *bona fide* made, it shall be lawful to summon before them "respectively any person who shall have bought or sold, o "shall be suspected to have bought or sold, or agreed to bu "or sell, any grain, meal, or flour, or who shall be thought "to be likely to give any information concerning the pre "mises, and to examine them respectively upon their several "oaths, touching the rates and prices the several sorts o "grain,

" grain, meal, and flour, or any of them, were there really " and *bona fide* bought at, or ſold for, or agreed ſo to be by " him, her, or them, reſpectively, at any time within ſeven " days preceding the ſummoning: and if any perſon ſo ſum- " moned ſhall neglect to appear, (and proof be made on oath " of ſuch ſummons having been duly ſerved) or if any perſon " ſo ſummoned ſhall appear, and neglect or refuſe to anſwer " lawful queſtions, on being convicted by the oath of one " witneſs, or confeſſion, before any ſuch court, magiſtrate, " or juſtices, ſhall forfeit not exceeding ten pounds, and not " leſs than forty ſhillings: and if any perſon, ſo examined on " oath, ſhall forſwear himſelf, ſuch perſon ſhall be liable to " be proſecuted as for perjury, by indictment or information, " provided that the party ſo ſummoned be not obliged to tra- " vel above five miles from the place of his abode."

Party not obliged to travel above 5 miles.

† *Sect.* 23. And it is further enacted, par. 20. " When- " ever any court, as aforeſaid, magiſtrate, or juſtices, ſhall " order any bread to be made with the meal of any other " grain than wheat, or to be mixed with wheat, or to be made " with the meal of any other ſort of grain, either ſeparate or " mixed together, all perſons ſhall make bread for ſale with " ſuch mixed meal, or of ſuch weight and goodneſs, and ſhall " ſell the ſame at ſuch prices, as ſuch court, magiſtrates, or " juſtices, ſhall direct, upon pain of any ſum not exceeding " five pounds, nor leſs than forty ſhillings."

Bakers to make the bread of ſuch weight goodneſs, and price, as ſhall be directed.

† *Sect.* 24, And it is further enacted, par. 21. " That the " ſeveral ſorts of bread ſhall be well made, according to the " goodneſs of the ſeveral ſorts of meal, whereof the ſame ought " to be made, and that no allum, or any mixture or ingredi- " ent whatſoever (except only the genuine meal, common " ſalt, pure water, eggs, milk, yeaſt, and barm, or ſuch leaven " as ſhall be allowed by the court, or perſon who ſhall have " ſet an aſſize of bread where any ſuch leaven ſhall be uſed, " and where no ſuch aſſize ſhall have been ſet, then ſuch " leaven as any magiſtrate or juſtice ſhall allow, ſhall be uſed " in making dough, or any bread to be ſold, upon pain that " every perſon (other than a ſervant or journeyman) who ſhall " knowingly offend, and be convicted by confeſſion, or by " oath of one witneſs, before any ſuch magiſtrate or juſtice, " ſhall forfeit not exceeding ten pounds, and not leſs than " forty ſhillings, or ſhall be commited to the houſe of cor- " rection, or ſome priſon of the county or place where the of- " fence ſhall be, to hard labour, not exceeding one calendar " month, nor leſs than ten days. And if any ſervant ſhall of- " fend, he ſhall forfeit, not exceeding five pounds, and not leſs " than twenty ſhillings, or be apprehended and committed as " aforeſaid; and it ſhall be lawful for the magiſtrate or juſtice, " before

No adulteration or mixture, except the genuine meal or flour, ſalt, water, eggs, milk, yeaſt, and barm, or ſuch leaven as ſhall be occaſionally allowed.

" before whom any ſuch offender ſhall be convicted, out of
" money forfeited, to cauſe the offender's name, place
" abode, and offence, to be publiſhed in ſome newſpap
" which ſhall be printed or publiſhed in or near the coun
" city, or place, where any ſuch offence ſhall have been co
" mitted."

The penalty of adulterating corn, meal, or flour.

† *Sect.* 25. And it is further enacted, par. 22. "That
" perſon ſhall put into any corn, meal, or flour, grou
" dreſſed, bolted, or manufactured for ſale, any mixture
" thing whatſoever, or ſhall knowingly ſell, offer, or exp
" to or for ſale, any meal of one ſort of grain as or for
" meal of any other ſort of grain, or any thing as or for,
" mixed with, the meal of any grain, which ſhall not be
" real and genuine meal of the grain the ſame ſhall import
" be, upon pain of forfeiting any ſum not exceeding five poun
" nor leſs than forty ſhillings."

Penalty where bread ſhall be of a different mixture of corn than what it importeth to be of, or is allowed.

† *Sect.* 26. And it is further enacted, par. 23. "That
" perſon ſhall put into any bread made for ſale, any mixt
" of meal of any other ſort of grain than of the grain the ſa
" ſhall import to be, and allowed to be made of or any lar
" or other proportion of any other or different ſort of gra
" or the meal thereof, than what ſhall be allowed, or any m
" ture or thing in lieu of flour, which ſhall not really be
" genuine flour the ſame ſhall import and ought to be, up
" pain of forfeiting not exceeding five pounds, nor leſs th
" twenty ſhillings."

Penalty for making bread under weight, &c.

† *Sect.* 27. And it is further enacted, par. 24. "That
" any perſon ſhall make, ſend out, ſell, or expoſe to or
" ſale, any bread deficient in weight, he ſhall forfeit not
" ceeding five ſhillings, nor leſs than one ſhilling, for eve
" ounce deficient; and for every loaf found wanting leſs th
" an ounce not exceeding two ſhillings and ſixpence, nor
" than ſixpence, ſo as ſuch bread which ſhall be complained
" for wanting weight in any city, town-corporate, borou
" liberty, or franchiſe having juriſdiction thereof, or wit
" the bills of mortality ſhall be brought before ſome magiſtra
" and weighed, within twenty-four hours after, and ſo as ſu
" bread which ſhall be ſo complained of as in any hundre
" riding, diviſion, liberty, rape, wapen-take, or place, ſh
" be brought before ſome juſtice of ſuch place, and weigh
" within three days after, unleſs ſuch deficiency wholly ar
" from ſome accident, or was occaſioned by ſome contriva
" or confederacy."

All bread to be fairly marked.

† *Sect.* 28. And it is further enacted, par. 25. "Th
" every baker ſhall cauſe to be fairly marked on every loaf
" wheaten bread a large Roman W. and upon every loaf
" houſehold or brown bread a large Roman H. ſo as the ſa
" ma

may, on the view thereof, be aſcertained under what denomination of bread every ſuch loaf was made, (except ſuch loaves which ſhall be raiſed by the deſire of any perſon who ſhall order the ſame, on pain of forfeiting not exceeding twenty, nor leſs than five ſhillings."

Bakers taking a higher price or refuſing to ſell.

† Sect. 29. And it is further enacted, par. 26. "That no perſon ſhall take for any bread a higher price than ſhall be aſcertained by the court, magiſtrate, or juſtices, authoriſed to ſet the price and aſſize, nor refuſe to ſell any to any perſon who ſhall tender ready money for the ſame, at the price ſuch bread, by the aſſize, ſhall be fixed at, when he ſhall have any ſuch bread in his houſe or poſſeſſion, to be ſold, more than ſhall be requiſite for the immediate neceſſary uſe of his own family or cuſtomers; and it ſhall be incumbent on ſuch baker to prove the contrary, upon pain of forfeiting not exceeding forty, nor leſs than ten ſhillings."

Bread inferior to wheaten not to be higher than houſehold.

† Sect. 30. And it is hereby likewiſe enacted, par. 26. "That if any perſon ſhall offer to ſale any bread of an inferior quality to wheaten bread, at a higher price than houſehold bread ſhall be ſet at by the aſſize, he ſhall forfeit, by confeſſion, or the oath of one witneſs, twenty ſhillings."

The houſes, ſhops, &c. of bakers may be ſearched, and the bread weighed.

† Sect. 31. It is further enacted by par. 27. and by 32 Geo. 2. c. 18. ſ. 2. "That any magiſtrate or juſtice, and alſo any peace officer, authoriſed by warrant of any ſuch migiſtrate in the day-time, may enter into any houſe, ſhop, ſtall, bake-houſe, warehouſe, or out-houſe, of or belonging to any baker, or ſeller of bread, to ſearch for, view, weigh, and try, all or any the bread which ſhall be there found; and if any bread, on any ſuch ſearch, ſhall be found to be wanting, either in the goodneſs of the ſtuff whereof the ſame ſhall be made, or to be deficient in the due baking or working thereof, or ſhall be wanting in the due weight, or ſhall not be truly marked according to the directions of this act, or ſhall be of any other ſort of bread than ſhall be allowed to be made by virtue of this act; any ſuch magiſtrate or peace officer may ſeize the ſame, and diſpoſe thereof as he ſhall think fit."

Where any miller, mealman, or baker, ſhall be ſuſpected of adulterating; the migiſtrate, &c. upon information on oath, may enter the premiſes him-

† Sect. 32. And it is further enacted, par. 28. "That if information ſhall be given on oath to any magiſtrate or juſtice that there is cauſe to ſuſpect that any miller who grinds any grain for reward, or any perſon who doth dreſs, bolt, or in any wiſe manufacture any meal or flour for ſale, or any maker of bread for ſale, doth mix up with, or put into, any meal or flour ground or manufactured for ſale, any

self, and search, or may grant a search warrant to some peace officer; and such meal and flour as shall be deemed adulterated, may be seized.

"mixture, ingredient, or thing whatsoever, not the genu
"produce of the grain such meal or flour shall import a
"ought to be, or whereby the purity of any meal or flour,
"the possession of any such miller, mealman, or baker, is
"shall be in anywise adulterated; then such magistrate or
"tice, and also any peace officer, authorised by warrant in
"day-time, on information may enter into any house, m
"shop, bakehouse, stall, bolting house, pastry, ware-hou
"or out-house, of or belonging to any such miller, mealm
"or baker, and to search and examine; and if on any s
"search it shall appear that any offence hath been commit
"contrary to this act; then any magistrate, justice, or off
"authorised as aforesaid respectively, may seize and take
"meal or flour which shall be deemed, on any such search,
"have been adulterated, and all mixtures and ingredie
"which shall be found and deemed to have been used, or
"tended to be used, in or for any such adulteration; and s
"thereof as shall be seized by any peace officer or officers
"thorised as aforesaid, shall be carried to some magistrate
"justice; and if any magistrate or justice, who shall make
"seizure in pursuance of this act, or to whom any thing sei
"under the authority of this act shall be brought, shall adju
"that any mixture or ingredients, not the genuine produce
"the grain which such meal or flour so seized, shall imp
"and ought to be, shall have been put into any such meal
"flour, or that the purity of any such meal or flour so seiz
"was adulterated by any mixture or ingredient put there
"then, every such magistrate or justice, is hereby required
"dispose of the same as he shall think proper."

And the miller, mealman, or baker, forfeit, not exceeding 10l. nor less than 40s.

† Sect. 33. And it is further enacted, par. 29. "T
"every miller, mealman, baker, or seller of bread as afo
"said, in whose house, mill, shop, bake-house, stall, boltin
"house, pastry, warehouse, out-house, or possession, any m
"ture or ingredient shall be found, which shall be adjud
"by any magistrate or justices to have been lodged there, w
"*in intent* to have adulterated the purity of meal, flour,
"bread, shall, on being convicted by confession, or the o
"of one witness, *forfeit*, not exceeding ten pounds, nor
"than forty shillings;—unless that such mixture or ingredie
"was or were not brought or lodged with any design or int
"to have been put into any meal or flour, or to have adulter
"ed therewith the purity of any meal or flour, but that
"same was in the place for some other lawful purpose."

Exception.

"And the magistrate out of the money forfeited, may ca
"the offender's name, place of abode, and offence, to
"published, in some news paper in or near the county, c

or place, where any such offence shall have been committed."

Sect. 34. And it is further enacted, par. 30. "That if any person shall wilfully obstruct any search or seizure, or shall oppose any such search being made, or the carrying away any such ingredients as aforesaid, or any bread which shall be seized, as not being made pursuant to this act, he shall forfeit not exceeding five pounds, nor less than twenty shillings."

Obstructing any search or seizure.

Sect. 35. Provided always, par. 31. "That no miller, mealman, or baker, shall act as a magistrate, or justice of the peace, under this act, on pain of fifty pounds to any person who will sue for the same, by action of debt, &c. at Westminster, or by summary complaint before the court of Session in Scotland."

No miller, mealman, or baker, to act as a magistrate.

Sect. 36. Provided also, par. 32. "That if any baker shall make complaint to any magistrate by the oath of one witness that any offence shall have been occasioned through the wilful neglect of any servant, then such magistrate may issue his warrant for bringing such servant before any such magistrate, or any magistrate or justice of the county or place where the offender can be found, and examine into the complaint; and, on proof thereof upon oath, by any order under his hand, may adjudge what sum shall be paid by such servant to his master or mistress, by way of recompence for the money he or she shall have paid by reason of the wilful neglect of any such servant; and if any such servant shall neglect on his conviction to make immediate payment, he shall be committed to the house of correction, or some other prison of the county or place in which any such servant shall be apprehended or convicted, to be there kept to hard labour not exceeding one calendar month, unless payment shall be made before the expiration of the said term."

Where the penalty was occasioned by the journeyman or servant, a recompence to be paid to the master.

Sect. 37. And it is further enacted, by par. 33. "That the mayor of London, or any alderman within the liberties thereof, and any other justice, or any one of them, within their respective jurisdictions may hear and determine, in a summary way, all offences against this act, and summon any offender; and in case the party shall not appear or offer some reasonable excuse for his default, then upon oath by one witness of any offence committed contrary to this act, any such magistrate shall issue his warrant for apprehending the offender; and upon the appearance, or in case he shall not appear, on notice being left at his usual place of abode, or if he cannot be apprehended, then such magistrate is authorised to proceed to

Offences heard and determined in a summary way, and offenders may be summoned.

"make

" make inquiry touching the matters complained of, and to
" mine any witneſs who ſhall be offered on either ſide, on
" as aforeſaid, and ſhall convict or acquit the party acc
" and if the penalty, on any ſuch conviction, ſhall not b
" within twenty-four hours after, every ſuch magiſtrate
" thereupon iſſue a warrant, directed to any peace officer
" their reſpective juriſdictions, to make diſtreſs; and
" offender ſhall convey away his goods, or ſo much there
" the penalty cannot be levied, then ſome magiſtrate within
" juriſdiction the offender ſhall have removed his goods,
" back the warrant, for levying the diſtreſs; and if within
" days from the diſtreſs being taken, the money forfeited
" not be paid, the goods ſeized ſhall be appraiſed and ſold
" for want of ſuch diſtreſs, then every ſuch magiſtrate,
" application of any proſecutor, and proof made of the
" viction and non-payment of the penalty and charges, by
" rant under his hand and ſeal, ſhall commit every ſuch of
" to the common gaol or houſe of correction of the city or
" where ſuch offender or offenders ſhall be found, for one
" dar month, unleſs payment ſhall be made of the ſaid pe
" coſts and charges, before the expiration of the ſaid one ca
" month.—And all ſuch penalties and forfeitures, when
" vered, ſhall be paid to the informer."

† *Sect.* 38. But by 32 Geo. 2. c. 18. the generality o
application of the forfeiture to informers is reſtrained, an
enacted, " That the penalties not *particularly* diſpoſed
" 31 Geo. 2. c. 29. where the conviction is by confeſſion o
" oath of one witneſs, ſhall be, *one moiety* to the informer
" the other moiety, together with all penalties incurred o
" weighing, trying, or ſeizing of any bread by any mag
" or juſtice ſhall be applied for the better carrying the ſa
" into execution, as ſuch magiſtrate or juſtice ſhall think fit."

Power to ſummon material evidence.

† *Sect.* 39. And it is further enacted, par. 34. " T
" it ſhall be made out by the oath of any credible p
" that any one is likely to give material evidence on
" of the proſecutor or the perſon accuſed, and will no
" luntarily appear before ſuch magiſtrate to be exam
" every ſuch magiſtrate is authoriſed to ſummons every
" witneſs; and if any perſon ſo ſummoned ſhall negle
" appear, and no juſt excuſe ſhall be offered, then (after

Witneſſes to be examined on oath.

" by oath of ſuch ſummons having been duly ſerved)
" ſuch magiſtrate is authoriſed to iſſue his warrant unde
" hand and ſeal, to bring and examine upon oath every
" witneſs: and if on his appearance he ſhall refuſe

" exam

"amined on oath concerning the premiſſes, without offering "any juſt excuſe, any ſuch magiſtrate may, by warrant, com- "mit any perſon ſo refuſing to the public priſon of the county or "place in which he ſhall be, there to remain not exceeding four- "teen, nor leſs than three days."

† *Sect.* 40. And it is further enacted, par. 37. "That no "*certiorari*, letters of advocation, or of ſuſpenſion ſhall be grant- "ed to remove any conviction, or other proceedings had thereon "in purſuance of this act." — No *certiorari*, &c.

† *Sect.* 41. Provided, par. 38. "That if any perſon ſhall "think himſelf aggrieved, he ſhall have liberty to appeal to the "next general or quarter ſeſſions for the county or place, upon "entering into a recognizance at the time of conviction, with "two ſufficient ſureties, in double the ſum which he ſhall have "been adjudged to pay, upon condition to proſecute ſuch appeal "with effect, and to be forthcoming to abide the judgment and "determination of ſaid next general or general quarter ſeſſions, "who ſhall finally determine the matter of every ſuch appeal, "and award coſts to be paid by either party: and if the judg- "ment ſhall be affirmed, ſuch appellant ſhall immediately pay "down the ſum he ſhall have been adjudged to forfeit, with "ſuch coſts as the ſeſſions ſhall award to the proſecutor or infor- "mer, for the expences ſuſtained by ſuch appeal; and in default "of paying the ſame, any two ſuch juſtices, or any one magiſtrate or "juſtice of the peace, having juriſdiction in the place into which "any ſuch appellant ſhall eſcape, or where he ſhall reſide, "ſhall commit every ſuch appellant to the common gaol of the "county or place where he ſhall be apprehended, until he ſhall "make payment; but if the appellant make good his appeal, "coſts ſhall be awarded to the appellant againſt ſuch informer, "and which coſts may be recovered by the appellant againſt "any ſuch informer, in like manner as coſts given at any general "or general quarter ſeſſions of the peace are recoverable." — Perſons aggrieved may appeal to the next ſeſſions. Appellant is to enter into recognizance, to hear and determine the matter, and award coſts.

† *Sect.* 42. Provided, par. 39. "That if any ſuch conviction "ſhall be made within ſix days before any general or general "quarter ſeſſions for the county or place where ſuch conviction "ſhall have been made, then the party aggrieved ſhall, on enter- "ing into a recognizance as before directed, appeal either to the "then next or the next following ſeſſions." — Appeal to the ſeſſions following.

† *Sect.* 43. And it is further enacted, par. 40. "That every "action or ſuit brought againſt any magiſtrate or any peace "officer, — Limitations of actions.

Vide the reasons for extending the protection of this statute, to persons acting under the present act. 1 Burn's Justice, p. 256.

"officer, for any thing done under this act, shall be commenced "within six months next after the fact committed, and shall be "laid in the county, city, or place, where the matter shall arise; "and that the 24 Geo. 2. c. 44. so far as relates to the reasonable "ing the justices more safe in the execution of their office, shall "extend to the magistrate acting under this act; and that no ac- "tion or suit shall be had, nor any writ sued out, or copy of a "writ be served upon, any peace officer, until seven days after "notice in writing, given to or left for him at his place of abode "by the attorney for the party intending to commence such ac- "tion; which notice shall contain the name and place of abode of "the person intending to bring such action, and also of his attor- "ney, and likewise the cause of action or complaint: And the "peace officer may, at any time within seven days after any such "notice, tender, or cause to be tendered, any sum of money "as amends for the injury complained of, to the party complain- "ing, or to the attorney named in any such notice; and, if not "accepted, the defendant may plead such tender in bar, together "ther with the general issue, or any other plea, with leave of "the court in which the action shall be commenced; and if, upon "on issue joined on such tender, the jury shall find the amends "tendered to have been sufficient, they shall find a verdict for "the defendant; and in such case, or if the plaintiff become "nonsuit, discontinue, or judgment shall be given for the defen- "dant upon demurrer, or if any action or suit shall be brought "after the time limited, or shall be brought in any other place "than as aforesaid, then the jury shall find for the defendant, "and he shall be intitled to costs: But if the jury shall find that "no such tender was made, or not sufficient, or against the de- "fendant, they shall give the plaintiff such damages as they "shall think proper; and the plaintiff shall recover costs."

Officer may make tender of amends.

† And it is further enacted, "That the defendant may plead "the general issue, and give this act, and the special matter in "evidence; and if a verdict shall be recorded for the defendant, "or if the plaintiff shall be nonsuited, or discontinue his action "after the defendant shall have appeared; or if judgment shall "be given, upon a verdict or demurrer, against the plaintiff, the "defendant shall recover treble costs."

Persons may plead the general issue; and obtain treble costs.

† *Sect.* 44. Provided, par. 41. "That no person shall be "convicted, for any of the before-mentioned offences, unless "the prosecution be commenced within three days next after the "offence committed."

Prosecution in 3 days.

† Sect.

Sect. 45. "This act shall not extend to prejudice any right or custom of the city of London, or the practice there used, or any right or custom of any lord or lords of any leet, to set, inquire, and punish, the breach of assize of bread, or the right of any clerk of the market."

General reservation of rights.

Sect. 46. "Nor to prejudice the ancient right or custom of the dean of Westminster, or the high steward of Westminster, and the liberties thereof, to set, ascertain, and appoint the assize and weight of all sorts of bread; but they may respectively set, ascertain, and appoint, according to the meaning of this act, the assize and weight of all sorts of bread which shall be made, sold, or exposed to sale, in Westminster, and the liberties thereof; and shall and may inquire and punish the breach of every such assize and weight of bread, as fully and freely in all respects, as they, or any of them have heretofore been accustomed to."

Reservation of rights of Westminster, to set an assize of bread, within the city and liberty.

† Sect. 47. "Nor to prejudice the right of Oxford or Cambridge, or of their clerks of the market, to set the assize and weight of all sorts of bread, &c."

Oxford and Cambridge, to set an assize.

† Sect. 48. But the provisions of the foregoing statute of 31 Geo. 2. c. 29. being found defective, when an assize of bread is to be set, it is accordingly enacted by 3 Geo. 3. c. 11. par. 1. "That although no assize of bread shall be set in pursuance of "the said act, no loaf called or deemed assize loaf in the tables of "the assize and price of bread in the said act referred to, shall be "made for sale, in any place where any loaf of the bread called "or deemed prize loaf, in the said tables of the assize and price "of bread, that is to say, no assize loaves of the price of three "pence, and prized loaves called half quartern loaves, nor assize "loaves of the price of six-pence, and prized loaves called quartern loaves, nor assize loaves of the price of twelve-pence, and "prized loaves called half peck loaves, nor assize loaves of the "price of eighteen pence, and prized loaves called peck loaves, "shall, at the same time, in any place be made for sale, sold, or "carried out for sale, or be offered or exposed to or for sale, or "allowed to be sold, on pain of forfeiting not exceeding forty, nor "less than ten shillings."

No assized and prized bread to be made at the same time in the same place.

† Sect. 49. And it is further enacted, par. 2. "That the "justices at any general or quarter sessions, or at any petty "session, shall appoint which of the sorts of assize or prized "loaves shall be allowed to be made and sold; and also what "other sorts of bread, and grain, shall be allowed to be "made and sold within their respective jurisdictions, or any "part thereof; and every order which shall be so made, shall "be entered in a book provided for that purpose, and in-

Quarter or petty sessions may appoint the sorts of assize or prized loaves, and what other bread shall be made.

"spected

"ſpected by the makers of bread for ſale, in the day-time, wit
"out fee; and after the making every ſuch order, the juſtic
"who ſhall make the ſame ſhall cauſe a copy to be affixed up
"ſome market, or other publick town within the diviſion or pla
"in which ſuch order is to be obſerved; or elſe ſhall cauſe
"copy to be inſerted in ſome public news-paper publiſhed in t
"county or place, or ſome part thereof in which every ſuch ord
"is to be obſerved."

A copy to be publiſhed.

† *Sect.* 50. Provided, par. 3. "That no juſtices ſhall allo
"any ſorts of aſſize bread made of the flour or meal of whe
"other than wheaten and houſhold bread, and loaves of whi
"bread of the price of two-pence, or under."

Sorts of aſſize bread of wheat to be allowed.

† *Sect.* 51. And it is further enacted, par. 4. "That eve
"maker of bread for ſale ſhall obſerve the proportion betwe
"white and wheaten bread, and wheaten and houſhold aſſi
"bread, as to weight, as is mentioned in the ſaid aſſize table
"that is to ſay, every white loaf of the price of two-pence,
"under, ſhall always weigh three parts in four of the weight
"the wheaten loaf of the like price; and every wheaten aſſi
"loaf of bread, of whatſoever price the ſame ſhall be, ſhall a
"ways weigh three parts in four of the weight of every houſhol
"aſſize loaf of bread of the like price; and that every houſhold aſſi
"loaf of bread, of whatever price the ſame ſhall be ſhall alwa
"weigh one third part more than every wheaten aſſize loaf of th
"like price, on pain of forfeiting not exceeding forty ſhillings."

Proportion as to weight, between the white and wheaten bread, and the wheaten and houſhold aſſize bread.

† *Sect.* 52. And it is further enacted, par. 5. "That ever
"peck, half peck, quarter of a peck, and half quarter of a pec
"loaf, of the meal or flour of wheat, and called wheaten brea
"ſhall always be ſold in proportion to each other reſpectively, a
"to price; and that every peck, half peck, quarter of a peck
"and half quarter of a peck loaf made for ſale, of the meal o
"flour of wheat, and called houſhold bread, ſhall always be ſol
"in proportion to each other, and for one fourth leſs in pric
"than the loaf made for ſale with the meal or flour of wheat
"called wheaten bread, of the ſame denomination, on pain o
"forfeiting not exceeding forty, not leſs than ten ſhillings.

The price in the peck loaf, and half peck, and in other ſubdiviſions, in the wheaten, and in houſhold bread.

† *Sect.* 53. And it is further enacted, par. 6. "That th
"ſeveral loaves after mentioned, ſhall weigh in averdupoi
"weight as follows; that is to ſay, every peck loaf, ſeventee
"pounds ſix ounces; every half peck loaf, eight pounds ele
"ven ounces; every quarter of a peck loaf, four pound
"five ounces, and one half ounce; and every half quarter o
"a peck loaf, two pounds two ounces and three quarters
"on pain of forfeiting not exceeding five ſhillings, not leſ
"than

The weight of the peck loaf, and its ſubdiviſions, in every ſort of bread; the ſame to be weighed before a juſtice, within 24 hours, and in other places.

"than one ſhilling for every ounce wanting; and for leſs than one ounce not exceeding two ſhillings and ſix-pence, nor leſs than ſix-pence; ſo as all ſuch bread in any city, town corporate, borough, liberty, or franchiſe, or the juriſdiction thereof, or within the weekly bills of mortality, ſhall be brought before ſome juſtice and weighed, within twenty-four hours after the ſame ſhall have been baked, or found in any perſon's cuſtody for ſale, and elſewhere, within three days, unleſs it ſhall be made out, that ſuch deficiency wholly aroſe from ſome unavoidable accident, or was occaſioned by ſome contrivance or confederacy."

within 3 days; unleſs deficiency be accounted for.

† *Sect.* 54. And it is further enacted, par. 7. "That no perſon ſhall offer to ſale any bread of an inferior quality to wheaten bread, at an higher price than houſhould bread, upon pain of forfeiting not exceeding twenty ſhillings."

Bread inferior to wheaten, not to be ſold higher than houſhold.

† *Sect.* 55. And it is further enacted, par. 8. "That on the ſaid wheaten or houſehold bread ſhall be imprinted a large Roman (W), and on houſehold a large Roman (H), except loaves raſped by the deſire of the perſon who ſhall order the ſame, on penalty of forfeiting not exceeding forty, nor leſs than ten ſhillings; unleſs it wholly aroſe from ſome unavoidable accident, or was occaſioned by contrivance or confederacy."

A large Roman (W) to be imprinted on all wheaten bread and a large Roman (H) on houſhold.

† *Sect.* 56. And it is further enacted, par. 9. "That every loaf made of any other grain than wheat, ſhall be marked with ſome letter or letters, not more than two, as the general or quarter ſeſſion, or any petty ſeſſion ſhall direct; which order ſhall be entered in ſome book which any maker of bread may peruſe, without fee; and ſuch juſtices ſhall cauſe a copy to be put up in ſome publick town within the diviſion, or ſhall cauſe a copy thereof to be inſerted in ſome publick newſpaper publiſhed in the county; and if the juſtices ſhall neglect, then the maker of all ſuch bread ſhall, in every place where no ſuch order ſhall be made, cauſe every loaf of ſuch bread to be marked with any two diſtinct capital letters as he ſhall think fit, (except loaves raſped by deſire) on pain of forfeiting, not exceeding forty nor leſs than five ſhillings, for every loaf of ſuch bread which ſhall not be ſo marked as herein before is firſt directed."

Bread made of any other grain than wheat, to be impreſſed with ſuch letters as the juſtices ſhall order.

An entry to be made free for inſpection.

Where the juſtices neglect to make ſuch order, the maker is to make every ſuch loaf with 2 diſtinct capital letters.

Penalty.

† *Sect.* 57. And it is further enacted, by par. 10. "That any juſtice, or peace officer by warrant of ſuch juſtice, may enter any place belonging to any baker, to ſearch, view, weigh, examine, and try, all or any bread which ſhall be there found; and if any bread ſhall on examination thereof, by any juſtice, or on the oath of one witneſs, be found deficient

Juſtices, or peace officers may enter houſes, and ſearch, &c.

Bread found defective in the weight, or not marked, &c. may be seized.

"ficient in weight, or not marked, or be deficient in the due "baking or working thereof, or be wanting in the goodness of "the stuff, or to have been made with any mixture of meal or "flour of any other grain than the same shall import to be made "with, or to be made with any other proportion of grain, or to "be made with any ingredient which ought not to be put there- "in; or to be made with any thing in lieu of flour, or that any "such bread shall be made with any leaven not allowed, every "justice and officer as aforesaid, shall seize such bread, and to "dispose thereof to poor persons, unless the default wholly arose "from accident, or contrivance or confederacy, upon pain of "forfeiting not exceeding five pounds, nor less than twenty shil- "lings."

Penalty of opposing.

† *Sect.* 58. And it is further enacted by par. 11. "That "if any person shall in any wise oppose any search, view, "weighing, trying, or seizing of any bread, he shall forfeit not "exceeding forty, nor less than twenty shillings."

No miller, mealman, or baker, may act as a justice.

† Provided, by par. 12. "That no miller, mealman, or ba- "ker, shall be allowed to act as a justice under this act, on pain "of fifty pounds, to whoever will inform or sue for the same at "Westminster, &c. or by way of summary complaint, before "the court of Session in Scotland."

Default of servants.

† Provided, par. 13. "That if any baker shall make com- "plaint to any justice, by the oath of one witness, that any of- "fence which shall have been occasioned by default of any ser- "vant, every such justice may issue his warrant for bringing "such servant before any such justice, or any justice of the coun- "ry or place where the offender can be found, and examine into "the matter; and on proof upon oath, is to adjudge and order "what sum of money shall be paid to his master or mistress, for "the money he or she shall have paid, by reason of the default "of such servant; and if such servant shall refuse on his con- "viction immediate payment, then any such justice may cause "every such servant to be committed to the house of correction, "or some other prison of the county or place in which he shall "be apprehended, to be kept to hard labour, not exceeding one "calendar month, unless payment shall be made."

Satisfaction.

Nonpayment.

Commitment.

† *Sect.* 59. By the 14, 15, 16. parts of this statute, it is "enacted, "That justices shall hear and determine the several "offences; and that the penalties and forfeitures shall be re- "covered, as by the before recited act 31 Geo. 2. c. 29. s. "34. 35. 36. is therein directed."

Ante p. 499. s. 37.

† *Sect.* 60. By par. 17, 18, 19. "No *certiorari* shall be "granted to remove any conviction or other proceedings had

Ante p. 501.

"thereupon

"thereupon; and the like liberty of appeal is preciſely given "by 31 Geo. 2. c. 29. ſ. 37, 38, 39."

‡ Sect. 61. By par. 20, 21, 22. The ſame limitation of actions; protection to juſtices and officers, &c. coſts, &c. is enacted in the preciſe words of 31 Geo. 2. c. 29. ſ. 40, 41.

‡ Sect. 62. And it is likewiſe enacted by par. 23. "That "no perſon ſhall be convicted under this act, unleſs the pro- "ſecution be commenced within three days; and that no per- "ſon convicted upon this act, ſhall be ſubject or liable to be "proſecuted for the ſame offence under any other law." Limitation of proſecutions.

† Sect. 63. By par. 24. The penalties and forfeitures are to be diſtributed, as directed by 32 Geo. 2 c. 18. (a) The rights of the univerſities are ſaved in the ſame words as by 31 Geo. 2. c. 29. ſ. 44, 45. (a) Ante p. 500.

Sect. 64. But as by the foregoing acts of 31 Geo. 2. c. 29. and 3 Geo. 3. c. 11. two ſorts of bread, made of wheat only, are allowed to be made for ſale, *viz.* wheaten and houſehold; it is enacted by 13 Geo. 3. c. 62. "That of the flour of wheat, "which flour, without any mixture or diviſion, ſhall be the "whole produce of the grain, the bran or hull thereof only ex- "cepted, and which ſhall weigh three-fourth parts of the weight "of the wheat whereof it ſhall be made, may be at all times "made and ſold, and ſhall be called A STANDARD WHEATEN "BREAD." Standard wheaten allowed.

Sect. 65. And it is further enacted, par. 2. "That the ba- "kers ſhall mark every loaf thereof with the capital letters S. W. "and that the ſame may be ſold although no aſſize of bread be "ſet of the weight, and in the proportions following; that is to "ſay, that every ſtandard wheaten peck loaf ſhall always weigh "17 lb. 6 oz. avoirdupois, every half peck loaf 8 lb. 11 oz. "and every quartern loaf 4 lb. 5 oz. and one half of an ounce "avoirdupois; and that every peck loaf, half peck loaf, and "quartern loaf, ſhall always be ſold, as to price, in proportion "to each other reſpectively; and that where wheaten and houſe- "hold bread, made as the law now directs, ſhall be ſold at the "ſame time, together with this ſtandard wheaten bread, they be "ſold in reſpect of and in proportion to each other, as followeth; "that is to ſay, that the ſame weight of wheaten bread as coſts "eight pence, the ſame weight of this ſtandard wheaten bread "ſhall coſt ſeven pence, and the ſame weight of houſehold bread "ſhall coſt ſixpence, or ſeven ſtandard wheaten aſſized loaves, "ſhall weigh equal to eight wheaten aſſized loaves or to Weight, price, and proportions.

"ſix.

"six household assized loaves of the same price, as near as may "be."

Standard wheaten not to be sold as prized loaves at one time.

† *Sect.* 66. And it is hereby further enacted, par. 3. "That "the said standard wheaten bread be not sold as prized loaves "at one and the same time, together with assized loaves of the "same standard wheaten bread."

Magistrates to set the assize.

† *Sect.* 67. And it is further enacted, par. 4. "That every "magistrate, or others authorised to set the assize and fix the "price of bread, are authorised to set the assize on, or fix the "price of the standard wheaten bread aforesaid, according to "the following table."

The Assize Table.

Price of the bushel of wheat and baking.	Small Bread.						Large Assize Bread.								
	Penny.			Two Pence.			Sixpence.			Twelvepence.			Eighteen Pence.		
s. d.	oz.		dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.
2 9	25		4	3	2	9	9	7	11	18	15	5	28	7	0
3 0	23		3	2	14	5	8	12	0	17	6	1	26	1	1
3 3	21		6	2	10	12	8	0	5	16	0	11	24	1	0
3 6	19		14	2	7	12	7	7	3	14	14	5	22	15	8
3 9	18		9	2	5	1	6	15	4	13	14	7	20	13	11
4 0	17		6	2	2	12	6	8	4	13	0	9	19	8	13
4 3	16		6	2	0	11	6	2	2	12	4	4	18	6	7
4 6	15		7	1	14	4	5	12	11	11	9	6	17	6	1
4 9	14		10	1	13	4	5	7	13	10	15	10	16	7	7
5 0	13		14	1	11	13	5	3	7	10	6	13	15	10	4
5 3	13		4	1	10	8	4	15	7	9	14	4	14	14	5
5 6	12		10	1	9	4	4	11	13	9	7	11	14	3	8
5 9	12		1	1	8	3	4	8	9	9	1	1	13	9	10
6 0	11		9	1	7	3	4	5	8	8	11	1	13	0	9
6 3	11		2	1	6	4	4	2	12	8	5	8	12	8	3
6 6	10		11	1	5	6	4	0	3	8	0	5	12	0	8
6 9	10		5	1	4	10	3	13	13	7	11	9	1	9	6
7 0	9		15	1	3	14	3	11	9	7	7	3	11	2	11
7 3	9		9	1	3	3	3	9	8	7	3	1	10	12	9
7 6	9		4	1	2	9	3	7	10	6	15	4	10	6	13
7 9	9		0	1	1	15	3	5	13	6	11	0	10	1	7
8 0	8		1	1	1	6	3	4	2	6	8	4	9	12	7
8 3	8		7	1	0	14	3	2	9	6	5	2	9	7	11
8 6	8		3	1	0	6	3	1	1	6	2	2	9	3	3

Price

The Assize Table continued.

Small Bread.						Large Assize Bread.								
Penny.			Two Pence.			Sixpence.			Twelvepence.			Eighteen Pence.		
s.	d.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.
8	9	7	15	0	15	14	2	15	11	5	15	5	8	15	0
9	0	7	12	0	15	7	2	14	5	5	12	11	8	11	0
9	3	7	8	0	15	0	2	13	1	5	10	3	8	7	4
9	6	7	5	0	14	10	2	11	14	5	7	13	8	3	11
9	9	7	2	0	14	4	2	10	12	5	5	9	8	0	5
10	0	6	15	0	13	14	2	9	11	5	3	7	7	13	2
10	3	6	13	0	13	9	2	8	11	5	1	6	7	10	1
10	6	6	10	0	13	4	2	7	12	4	15	7	7	7	3
10	9	6	7	0	12	15	2	6	13	4	13	10	7	4	6
11	0	6	5	0	12	10	2	5	15	4	11	13	7	1	12
11	3	6	3	0	12	6	2	5	1	4	10	2	6	15	4
11	6	6	1	0	12	1	2	4	4	4	8	9	6	12	13
11	9	5	15	0	11	13	2	3	8	4	7	0	6	10	8
12	0	5	13	0	11	9	2	2	12	4	5	8	6	8	4
12	3	5	11	0	11	6	2	2	1	4	4	2	6	6	2
12	6	5	9	0	11	2	2	1	6	4	2	12	6	4	2
12	9	5	7	0	10	14	2	0	11	4	1	7	6	2	2
13	0	5	6	0	10	11	2	0	1	4	3	0	6	0	4
13	3	5	4	0	10	8	1	15	8	3	14	15	5	14	7
13	6	5	2	0	10	5	1	14	14	3	13	13	5	12	10
13	9	5	1	0	10	2	1	14	5	3	12	11	5	11	0
14	0	4	15	0	9	15	1	13	13	3	11	9	5	9	6
14	3	4	14	0	9	12	1	13	4	3	10	9	5	7	13
14	6	4	13	0	9	9	1	12	12	3	9	8	5	6	5

The

THE PRICE TABLE.

The Price Table. Prized Bread. Quartern Loaf		Half Peck Loaf.		Peck Loaf.		The price of the Sack.		The Price Table. Prized Bread. Quartern Loaf.		Half Peck Loaf.		Peck Loaf.		
s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.
0	2	0	5½	0	11	2	9	0	8½	1	5½	2	11	8
0	3¼	0	6	1	0	3	0	0	9	1	6	3	0	9
0	3½	0	6½	1	1	3	3	0	9½	1	6½	3	1	9
0	3½	0	7	1	2	3	6	0	9½	0	7	3	2	9
0	3¾	0	7½	1	3	3	9	0	9¾	0	7½	3	3	9
0	4	0	8	1	4	4	0	0	10	0	8	4	4	10
0	4¼	0	8½	1	5	4	3	0	10¼	1	8½	3	5	10
0	4½	0	9	1	6	4	6	0	10½	1	9	3	0	10
0	4¾	0	9½	1	7	4	9	0	10¾	1	9½	3	7	10
0	5	0	10	1	8	5	0	0	11	1	10	3	8	11
0	5¼	0	10½	1	9	5	3	0	11¼	1	10½	3	9	11
0	5½	0	11	1	10	5	6	0	11½	1	11	3	10	11
0	5¾	0	11½	1	11	5	9	0	11¾	1	11½	3	11	11
0	6	1	0	2	0	6	0	1	0	2	0¼	4	0	12
0	6¼	1	0½	2	1	6	3	1	0¼	1	0½	4	1	12
0	6½	1	1	2	2	6	6	1	0½	2	1½	4	2	12
0	6¾	1	2	2	3	6	9	1	0¾	2	1	4	3	13
0	7	1	0½	2	4	7	7	1	1	2	2	4	4	13
0	7¼	1	2½	2	5	7	3	1	1¼	2	3½	4	5	13
0	7½	1	3	2	6	7	6	1	1½	2	3	4	6	13
0	7¾	1	3½	2	7	7	9	1	1¾	2	2¾	4	7	13
0	8	1	4	2	8	8	0	1	2½	2	4	4	8	14
0	8¼	1	4½	2	9	8	3	1	2¼	2	4½	4	9	14
0	8½	1	5	2	10	8	6	1	2½	2	5	4	10	14

† Sect. 68. And it is enacted par. 5. "That all perſons ſelling the ſaid bread, ſhall be liable to the penalties, as they are liable to by the laws now in being, for any miſdemeanor or neglect, in reſpect to making, marking, ſelling, or expoſing to or for ſale, wheaten or houſehold bread." Penalties.

† Sect. 69. Provided, par. 6. "That if any information ſhall be laid againſt any baker for making, marking, baking, or expoſing to or for ſale, any bread, purporting to be the ſtandard wheaten bread aforeſaid, made of flour, not being the whole produce of the wheat, the bran or hull thereof only excepted, and weighing three fourth parts of the weight of the wheat whereof it was made, and ſuch baker ſhall prove that he bought the ſaid flour, as and for ſuch flour as aforeſaid, of the miller or mealman, naming his name and place of abode; the baker ſhall ſtand clear and acquitted, and the miller or mealman ſhall pay the penalties of adulterating corn, meal, or flour, by 31 Geo. 2. c. 5, 6." The miller or mealman ſelling adulterated flour, ſhall forfeit the penalties directed by act 31 Geo. 2.

† Sect. 70. And it is further enacted by par. 7. "That when any magiſtrate, ſhall have ſet an aſſize on or fixed the price of the ſaid ſtandard wheaten bread, they may omit the ſetting an aſſize upon, or fixing the price of any other ſort of bread." An aſſize on the price of ſtandard wheaten bread, fixed, the price of any other ſort may be omitted.

† Sect. 71. And it is further enacted by par. 8. "That the juſtices at any general or quarter-ſeſſion may prohibit for three months, unleſs they ſhall ſee cauſe ſooner to revoke the order for ſuch prohibition, at any adjourned quarter, or ſpecial ſeſſions, makers from making for ſale, any other ſorts of bread, of a ſuperior quality, and ſold at a higher price than the ſtandard wheaten bread: provided, that no ſuch order for ſuch prohibition be in force, until one calendar month after the date thereof; and every order ſhall be entered in a book, to be inſpected by the makers without paying any fee: And after the making every ſuch order the juſtices ſhall cauſe a copy to be affixed in ſome market, or other public town, within the diviſion, or inſerted in ſome public newſpaper, publiſhed in the county, or place." Quarter ſeſſions may prohibit, for 3 months, other bread than ſtandard wheaten.

† Sect. 72. Provided, par. 9. "That within London, and the liberties thereof, the company of bakers, and in any other place, any baker may offer all ſuch objections as ſuch company of bakers think fit againſt ſuch prohibition at the time when ſuch juſtices ſhall have under conſideration the ordering ſuch prohibition as aforeſaid." Company of bakers of London &c. may offer objections.

† Sect. 73. Provided par. 10. "That nothing ſhall prevent the magiſtrates and others, who are authoriſed to ſet an aſſize on bread, from allowing any white loaves or "wheaten Wheaten loaves of the price of 1d. or 2d. may be made.

" wheaten loaves of the price of one penny, or two pence,
" be made and ſold according to the table contained in 31 Ge
" 2. ſ. 10."

No aſſize on coarſer bread, at a lower price.

† *Sect.* 74. And whereas there may be many places whe
the inferior claſſes are uſed to bread made of wheat, of a coa
and cheaper ſort than the ſtandard wheaten bread, be it here
further enacted by par. 11. "That any baker may make ſu
" inferior bread, provided he ſell at a price under that of t
" houſehold bread, as directed by 31 Geo. 2."

Bread coarſer ſold, at the aſſized houſhold bread price, liable to penalty.

† *Sect.* 75. And it is further enacted, by par. 12. "Th
" when and where any baker ſhall ſell ſuch inferior bread
" weights and prices whereat the houſehold bread aforeſaid
" at that time aſſized, or priced, or ſold, he ſhall be liable
" the ſame as bakers are now by law liable to for any of t
" like miſdemeanor."

Powers of the magiſtrates.

† *Sect.* 76. And it is further enacted, par. 13. "Th
" every magiſtrate ſhall have all powers relative to aſſizi
" pricing, and regulating the ſtandard wheaten bread a
" puniſhing as they have by any law now in being relative
" any bread whatſoever."

No compoſition to be uſed.

† *Sect.* 77. Thirdly, As to ALE AND BEER. It is enact
1 Will. 3. ſeſſ. 1. c. 24. ſ. 17. "That no common brew
" or retailer of ale or beer, ſhall uſe therein any molaſſ
" coarſe ſugar, or any compoſition or extract thereof,
" pain of forfeiting the ſaid liquor, and alſo 100*l.* half
" the king, and half to the proſecutor, if ſued for in
" months."

Penalty.

† *Sect.* 78. And it is enacted by 10 & 11 Will. 3. c.
ſ. 34. "That if any common brewer or retailer ſhall co
" mit the ſaid offence, or ſhall receive into his cuſtody a
" quantity of the ſaid materials exceeding ten pounds,
" ſhall forfeit 100*l.* to be recovered and mitigated by
" laws of exciſe, and the ſervant or aſſiſtant therein 20*l.*
" like manner, and in default of payment ſhall be impriſon
" three months."

† *Sect.* 79. And it is further enacted by 9 Ann. c.
par. 24. 26. "That no common brewer, innkeeper, or
" tualler, ſhall uſe any broom, wormwood, or other bit
" ingredient (to ſerve inſtead of hops) in any beer or ale
" ſale (except infuſing the ſame after it is brewed and tunn
" to make broom or wormwood ale or beer) on pain of
" half to the proſecutor, &c. to be levied by the laws
" exciſe."

† S

† Sect. 80. And it is further enacted by 12 Ann. ſtat. 1. c. 2. That no common brewer or retailer of beer or ale, ſhall uſe any ſugar, honey, foreign grains, Guinea pepper, eſſentia bina, cocculos Indicus, or any unwholeſome ingredients, in the brewing of ale or beer, or mix any of them therewith, on pain of 20l. to be diſtributed, recovered and mitigated as aforeſaid."

N. B. As to inhancing the price of ale, &c. vide 2 and 3 Edw. 6. c. 15. and 2 Geo. 3. c. 14. before recited.

† Sect. 81. And it is enacted by 8 Eliz. c. 9. "That magiſtrates both in counties and in corporations, ſhall fix the price of all ale and beer veſſels yearly, at their Eaſter ſeſſions."

† Sect. 82. And it is further enacted by 12 Car. 2. c. 24. 34. and 1 Will. 3. ſt. 1. c. 24. ſ. 5. "That within the bills of mortality every barrel of beer ſhall contain 36 gallons, and every barrel of ale 32 gallons, and that in all other places every barrel of ale or beer ſhall meaſure 34 gallons."

† Sect. 83. And it is further enacted by 11 and 12 Will. 3. c. 15. "That all retailers of ale and beer ſhall retail the ſame by a ſtandard meaſure, to be marked by a magiſtrate, upon penalty of any ſum between 10s. and 40s. and if they refuſe to ſpecify the quantities ſold, they ſhall loſe the privilege of detaining the goods of their gueſt in ſatisfaction of the reckoning."

Vide Blackerby, 10. 1 Burn's Juſtice 39.

† Sect. 84. And it it further enacted by 1 Will. and Mary, ſt. 1. c. 22. "That ale, beer, cyder and mum, may be exported upon paying the duties." But by 2 Geo. 3. c. 14. which repeals the above act of Will. 3. "If any merchant or maſter of any ſhip or veſſel, or other perſon, ſhall cauſe or ſuffer any of the ſaid liquors, ſo exported as merchandize to be unſhipped, unladen, or laid on land, or put into any other ſhip or veſſel within Great Britain, they ſhall forfeit the ſame, and alſo 50l. for every caſk of ſuch reſpective liquors ſo unſhipped, &c. (1)

(1) N. B. For the excise and other regulations reſpecting ale, beer, cyder, perry, mum, metheglin, meads, ſweets, verjuice, and vinegar, vide 2 Burn's Juſtice, p. 32 to 46.

† Sect. 85. As to the article of BUTTER and CHEESE, it is recited by 13 and 14 Car. 2. c. 26. That as butter is one of the principal commodities of the product of this kingdom, and is not only of univerſal uſe at home, but that great quantities are exported, it is thereupon enacted, "That every kilderkin of butter ſhall contain 112 lb. every firkin 56 lb. and

"every pott 14 lb. reckoning 16 ounces to the pound, and ex
"five of the tare of the kilderkin, firkin, or pott; that
"and old butter ſhall not be mixed; nor any whey butter pac
"or mixed with butter made of cream, but that every pack
"ſhall contain the ſame quality throughout; that no butter
"be ſalted with any great ſalt, nor more ſmall ſalt mixed
"it than is neceſſary for its preſervation, on pain of forfeiting
"ſame, and ſix times the value of every different pound
"butter."

† *Sect.* 86. And it is further enacted, par. 3. "That no
"ſons whatſoever ſhall repack for ſale any butter upon pain
"double the value. And whoever ſhall pack butter, ſhall
"his butter into good and ſufficient caſks, *&c.* and ſhall ſet u
"every firkin and caſk when the ſame is thoroughly ſeaſoned
"water, a continuing viſible mark of the juſt weight of
"empty caſk, and when filled with butter the firſt letter of
"chriſtian and ſurname at length, with an iron brand, on p
"of 10s. for every cwt. of butter, and ſo in proportion, for
"greater or leſs quantity. And every potter ſhall ſet upon ev
"pott which he ſhall make for the packing of butter, the
"weight of ſuch pott when burnt, and his chriſtian and ſurna
"aforeſaid, on pain of one ſhilling for every pott he ſh
"omit ſo to mark; and every farmer or packer of butter, t
"ſhillings for every pott he uſes ſo omitted to be marked,
"half to the poor, the other to the proſecutor, to be recover
"by action of debt, indictment, information, or preſentme
"(if commenced within four months after the ſale) either in
"ſeſſions of the peace, or in the court of record of the pla
"where the offence is committed."

By 32 Car. 2. c. 2. § 9. No butter or cheeſe to be imported from Ireland.

† *Sect.* 87. And it is further enacted by 4 Will. and Mar
c. 7. "That after the factor or buyer hath bought and contract
"for the ſaid commodity, and approved by ſearching and weig
"ing the ſame, if he think fit, the ſeller ſhall not be liable
"any of the penalties above ſpecified, but that the ſaid facto
"or buyer, ſhall mark the ſaid butter, or the caſk where
"it is, and in caſe the ſame ſhall be afterwards exchanged
"opened, the caſk changed, or any bad butter mixed with goo
"butter, or any other fraud be committed by the ſeller, th
"offender, on conviction by one witneſs before one juſtice, ſha
"forfeit 20s. for every ſuch firkin and offence."

† *Sect.* 88. And to the end the trade for butter and chee
may not be engroſſed by particular perſons, it is enacted
"That every warehouſe-keeper, weigher, ſearcher, or ſhip
"per of butter and cheeſe, at any port or place in this king
"dom, ſhall receive all butter and cheeſe brought to the
"fo

"for any of the cheesemongers free of the city of London, or "other person making the said commodities, and shall take care "and ship the same, without preference on the next vessel for "London, unless the owners order the contrary, at the rate of "2*s.* 6*d.* a load, and no more, on pain of 10*s.* for every firkin "of butter, and 5*s.* for every wey of cheese. And the said "weigher shall keep a book of receiving and shipping the same, "*&c.*" (2)

(2) By 3 Hen. 6. c. 4. 18 Hen. 6. c. 3. Butter and cheese may be exported to any place.—By 9 Hen. 6. c. 8. The wey of cheese shall be of a certain weight.—By 2 Ph. & Mary. c. 5. 13 Ellz. c. 25. f. 20. A licence is to be granted on the exportation.—By 21 Jac. 1. c. 22. Justices may restrain the purchasing of them.—By 32 Car. 2. c. 2. f. 9. The importation of foreign butter and cheese is restrained.—By 8 Geo. 11. c 27. The packing of butter in the city of York is regulated.—By 17 Geo. 2. c. 8. The same at New Malton.—By 13 Geo. 3. c. 5. f. 2. Cheese may be imported for a limited time, duty free.

† *Sect.* 89. Fifthly, As to CATTLE. *&c.* It is enacted by 31 Geo. 2. c. 40. f. 11. "That no salesman or other broker or "factor who shall be employed to buy or sell any sort of cattle "for others, by commission, or for reward to be paid, or taken "by himself or any servant or agent, shall directly or indirectly, "for his own account, buy any live ox, bull, cow, steer, bul-"lock, heifer, calf, sheep, lamb, or swine, in London, or with-"in the bills of mortality, or at any place while any such cattle "shall be on the road, or be driving, bringing, or coming up, "or offered to or for sale in London, or within the bills of mor-"tality (other than such cattle which any such salesman, bro-"ker, or factor shall actually purchase for the necessary use or "provision of his family, and shall actually use accordingly), "and that no such salesman, broker, or factor, shall sell or ex-"pose, or offer to or for sale on his own account, in London, or "within the bills of mortality, either by himself or his servant "or agent, any live ox, bull, cow, steer, bullock, heifer, calf, "sheep, lamb, or swine, upon pain, on every conviction, of for-"feiting double the value of any live cattle which he shall so "buy or sell on his own account; provided the prosecution be "commenced within three days after the offence committed."

† *Sect.* 90. "On complaint made on oath, the justice of the "district is to summon, *&c.* the offender and the witnesses, and, "on the parties appearing or not appearing, thereupon is to pro-"ceed to hear the complaint in a summary way, and on such "payment of the forfeiture on conviction, is to issue his warrant "for the levying thereof by distress and sale, and for want of "distress, to commit the offender for any time not exceeding one "month, nor less than ten days, unless payment be sooner made. "And a witness refusing to be examined, may be committed not "exceeding ten days. Appeal may be made by the seller if ag-"grieved, to the quarter sessions, on giving security and notice, "and the determination of the sessions to be final."

† "*Sect.*

† *Sect.* 91. Sixthly, As to Fish I shall examine the size and preservation of them. 2, The rules for fishing in and near the sea. 3. Their importation.

Vide 2 Inst. 200.

† *Sect.* 92. It is said that fish ponds, or waters wherein fish are kept and nourished, being a matter of profit and tending to the increase of victuals any man may of common right erect them; and it is therefore provided by 3 Edw. 1. c. 20. "That "if any be attainted at the suit of the party of trespassing in "parks or ponds, great and large amends shall be awarded, the "offender suffer 3 months imprisonment, make fine at the discre- "tion of the court, and find surety not to offend again, &c.

† *Sect.* 93. As to the first particular, it is enacted by 1 Geo. 1. st. 2. c. 18, s. 14. "That no person shall cause any thing "to be done in the Severn, Dee, Wye, Teame, Tees, Ribble, "Mersey, Dun, Air, Ouse, Swaile, Calder, Wharf, Eure, "Darvent, or Trent whereby the spawn of any salmon, or any "salmon not 18 inches from the eye to the extent of the middle "of the tail shall be taken or killed. Or shall set any thing across "the said rivers whereby the salmon may be hindered from "passing up to spawn. Or shall from 31 July to 12 November "(except in the Ribble, where they may be taken between the "1 Jan. and 15 Sep.) take any salmon of any kind; or shall "after every 12 November fish there for salmon with any net "less than 2½ inches in the mesh, on pain of forfeiting the fish "(a) nets, and 5l. on conviction, within one month, on view, "confession, or one witness by distress: and to be distributed "half to the informer and half to the poor on default hard la- "bour for any term between one and three months and such "other corporal punishment as the justice shall thing fit.

(a) As it is not said who shall have the fish, they are forfeited to the king. 2 Burn 321.

† *Sect.* 94. And it is further enacted, par. 15. "That no "salmon out of the said rivers shall be sent to London under 6lb. "weight, on pain that the sender, buyer, and seller shall for- "feit 5l. and the fish, to be levied and distributed on conviction "as aforesaid, or to suffer imprisonment as aforesaid for three "months unless sooner paid. But by s. 17. an appeal may be to "the next sessions."

† *Sect.* 95 And it it enacted by 13 Edw. 1. st. 1. c. 47. "That no salmon shall be taken in any water where salmon are "taken between 8th September and the 11th of November, nor "shall any young salmon be taken at mill pools (by 13 Rich. 2. "s. 1. c. 19.) in any other places from *Mid April* to Midsum- "mer, on pain of having the nets and engines burnt, for the "first offence, for the second imprisonment for a quarter of a "year,

"year, for the third a whole year, and ſo on as the treſpaſs "ſhall increaſe; and overſeers ſhall be aſſigned (a) to inquire of "the ſame." (a) 2 Inſt. 477.

† *Sect.* 96. And it is further enacted by 13 Rich. 2. ſt. 1. c. 19. "That no perſons ſhall put into any waters at any time of "the year any nets called *ſtalkers*, nor any other engines whate- "ver by which the fry or breed of ſalmons, lampreys or any "other fiſh may be deſtroyed, on pain as aforeſaid.—And all "waters in *Lancaſhire* ſhall be put into defence as to taking of "ſalmon from Michaelmas to Candlemas and in no other time of "the year."

† *Sect.* 97. And it is enacted by 17 Rich. 2. c. 19. "That "the juſtices of peace, and the lord mayor of London on the "Thames and Medway, ſhall ſurvey the offences in both the "acts laſt abovementioned, and ſhall ſurvey and ſearch all the "wears in ſuch rivers, that they ſhall not be very ſtraight for "the deſtruction of ſuch fry and brood, but a reaſonable wide- "neſs after the old aſſize uſed and accuſtomed, and they ſhall ap- "point under conſervators who ſhall be ſworn to make like ſur- "vey, ſearch and puniſhment, and they ſhall enquire in ſeſſions "as well by their office, as at the information of the under con- "ſervators of all defaults aforeſaid, and ſhall cauſe them which "ſhall be thereof indicted to come before them, and if they be "thereof convict, they ſhall have impriſonment and fine at the "diſcretion of the juſtices; and if the ſame be at the informa- "tion of an under conſervator he ſhall have half the fine."

† *Sect.* 98. It is enacted by 1 Eliz. c. 17. made perpetual by 3 Car. 1. c. 4. "That no perſon of whatever eſtate, degree or "condition, by any ways or means whatſoever ſhall take and kill "any young brood, ſpawn or fry of eels, ſalmon, pike, or of "any other fiſh, nor ſhall take or kill any ſalmons or trouts not "being in ſeaſon, nor any pike or pikerel not being in length 10 "inches or more; nor any ſalmon not being in length 16 inches "or more; nor any trout not being in length 8 inches or more; "nor any barble not being in length 12 inches or more, nor ſhall "any fiſh be taken with any manner of net or by any other en- "gine or device whatſoever but only with a net or trammel "whereof every meſh or mark ſhall be two inches and a half "broad, angling excepted." Whether the penalty is 20l. or 20s. for this offence. Vide 2 Burn's Juſtice 323.

† "But it is provided that ſuch nets and other engines as have "been uſed for the taking of ſmelts, loches, minnows, bull- "heads, gudgeons or eels may ſtill be in all ſuch places where "ſuch fiſh have been uſed to be taken and killed, ſo that ſuch

"perſons

"perſons do not take, kill or deſtroy with ſuch nets any oth
"fiſh contrary to the meaning of this act."

† The lord admiral of England. The mayor of Londo
"The lord of every leet in England or Wales, or in default
"being preſented at the leet, the juſtices of aſſize, &c. and
"perſons lawfully intitled to have any conſervation of river
"ſtreams or waters, are impowered to enquire into offenc
"againſt this act by the oaths of 12 men or more, and to he
"and determine the ſame within their reſpective juriſdiction
"and all fines, &c. reſulting from the ſeveral convictions; ſha
"be to the uſe of ſuch perſons as heretofore lawfully had or wer
"intitled to the ſame."

† *Sect.* 99. And it is further enacted by 33 Geo. 2. c. 27
"That no perſon ſhall take, or knowingly have in his poſſeſſio
"either in the water or on ſhore, or ſell, or expoſe to ſale an
"ſpawn, fry or brood of fiſh, or any unſizeable fiſh, or fiſh o
"of ſeaſon, or any ſmelt not 5 inches long. And any perſo
"may ſeize the ſame together with the baſkets and package, an
"charge a conſtable or other peace officer with the offender an
"with the goods, and ſhall carry them before a juſtice, and o
"conviction before ſuch juſtice, the ſame ſhall be forfeited an
"delivered to ſuch proſecutor, and the offender ſhall beſides for
"feit 20*s.* half to proſecutor and half to the poor where the of
"fence is committed, on default, by diſtreſs, to be committed t
"hard labour not exceeding 3 months unleſs ſooner paid. Bu
"the juſtices may remit any portion equal to or within one half o
"the ſaid penalty."

† *Sect.* 100. And by 2 Hen. 6. c. 15. "If any perſon ſhall
"faſten any nets over rivers, to ſtand continually day and night he
"ſhall forfeit 5*l.*"

† *Sect.* 101. As to the ſecond particular. And it is further enacted by 3 Jac. 1. c. 12. "That any perſon who ſhall erect
"any new wear along the ſea ſhore or in any haven, harbour or
"creek or within 5 miles of the mouth thereof, or ſhall take ſpoil
"or deſtroy any ſpawn, fry brood of any ſea fiſh in any device
"whatſoever, ſhall forfeit 10*l.* for every offence, half to the king,
"half to the informer; and if any perſon ſhall within the diſtance
"of the places aforeſaid fiſh with any draw net or drag net under
"three inches meſh, viz. one inch and a half from knot to knot
"except for the taking of ſmoulds in Norfolk only, or with any net
"with canvaſs or other engine or device whereby the ſpawn, fry or
"brood of ſea fiſh may be deſtroyed, ſhall forfeit the net and 10*s.*
"to be levied by diſtreſs. But it is provided that nothing in this
"act ſhall reſtrain the taking of herrings, pilchards, ſprats or

"laviderian

"laviderian with nets of a leſſer meſh, and further that it ſhall "not extend to Angleſea." (3)

(3) For the preſervation of fiſh in the Severn. See 30 Car. 2. ſt. 1. c. 9. a private act.

† *Sect.* 102. And by 1 Geo. 1. ſt. 2. c. 18. "Whoever ſhall "uſe at ſea upon the Engliſh coaſt, any haul net, drag net, or "ſet net for catching any fiſh, except herrings, pilchards, ſprats "or laviderian, of leſs than three inches and a half meſh, from "knot to knot; or which hath a falſe or double bottom; or ſhall "put one net behind another; he ſhall, on conviction before one "juſtice, on the oath of two witneſſes, in one month after the "offence forfeit the ſame and 20l. half to the informer and half "to the poor, by diſtreſs, and for want of ſufficiency to be com-"mitted for 12 months, and the nets to be burnt. But an ap-"peal may by made to the next ſeſſion."

† *Sect.* 103. It is alſo enacted by the ſaid ſtatute 1 Geo. 1. ſt. 2. c. 18. "That if any perſon ſhall bring to ſhore or ex-"poſe to ſale any fiſh leſs than the following ſizes from the eyes "to the extent of the tail, *viz.* Brelt or turbot 16 inches, brill "or pearl 14. Codlin 12. Whiting 6. Baſs and mullet 12. "Sole, place and dab 8. Flounder 7. he ſhall forfeit the fiſh to "the poor and 20s. half to the informer and half to the poor, "to be levied as aforeſaid, and for default or inſufficiency to be "ſeverely whipped and kept to hard labour from 6 to 14 days. "Appeal to next ſeſſions."

† *Sect.* 104. But it is enacted by 33 Geo. 2. c. 2. "That "brett, turbot, brill or pearl, although under the ſaid dimen-"ſions, may be expoſed to ſale ſo as the ſame be not ſold by re-"tail for above 6d. per pound; and if any greater price ſhall be "demanded or taken; or ſuch fiſh ſhall not be weighed or mea-"ſured if required, the ſame ſhall be forfeited and the offender "ſhall pay 20s. to be recovered, &c. as before directed. And "the money paid for the purchaſe of ſuch fiſh ſhall be returned "to the party."

† *Sect.* 105. It is enacted by 9 Geo. 2. ſ. 33. ſ. 4. "That "no perſon ſhall take, kill or deſtroy any lobſters on the coaſt "of Scotland from the 1ſt of June, to the 1ſt of September, "on pain of 5l. on conviction, before two juſtices, of the "ſhire on the coaſt where the offence ſhall be committed." (4)

(4) For further particulars relating to the price of fiſh within the bills of mortality vide 10 and 11 Will. 3. c. 24. ſ. 11. 9 Ann. c. 26. 22 Geo 2. c. 49. 29 Geo. 2. c. 39. 30 Geo. 2. c. 21.

† *Sect.*

† *Sect.* 106. As to the third particular respecting the impo
tation of fish, it is enacted by 18 Car. 2. c. 2. "That if a
"ling, herring, cod or pilchard, salmon, eels or congers, tak
"by foriegners shall be imported or exposed to sale, any pers
"may seize the same, to be divided equally between the info
"mer and the poor."

† *Sect.* 107. And it is further enacted, by 1 Geo. 1. c. 1
and 9 Geo. 2. c. 33. "That no fish taken by or received
"any foreigner, except protestants inhabiting in England shall
"imported (except eels, stockfish, anchovies, sturgeon, botar
"or caveas, lobster, and turbot) on pain of 100l. and the mas
"of the vessel 50l. half to the poor and half to the inform
"who shall sue in 12 months in any of the courts at Westmi
"ster." (5)

(5) For the law respecting the salting of fish, Vide 2 Burn's Justice, 112 to 128. a
for the British herring fishery. Vide 28 Geo. 2. c. 14.

† *Sect.* 108. Seventhly, As to BACON and PORK, it is ena
ted, by 18 Car. 2. c. 2. "That if any beef, pork, or baco
for "sale, shall be imported, they may be seized, and shall
"forfeited, one half to the poor, and the other to the pers
"who shall seize the same: and by the 20 Car. 2. c. 7. tho
"who shall seize the same are indemnified."

† *Sect.* 109. And it is further enacted, by 12 Car. 2. c.
s. 11. "That when beef, pork, and bacon, do not exceed, vi
"beef, 5l. the barrel, pork 6l. 10s. the barrel, and bacon 6d.
"pound in price, at the ports from whence they are laden; a
"at the time of their lading, the same may be shipped, carri
"out, and exported."

† *Sect.* 110. And by 22 Car. 2. c. 13. s. 4. "Beef, po
"and bacon, may be exported by native or foreigner, althou
"the same do exceed the prices above mentioned at the ports, &
"at the time of their lading."

† *Sect.* 111. And it is further enacted, by 3 Will. and Mar
c. 8. "That all sorts of beef, pork, or hogs flesh, man be e
"ported into any part of the world in amity with the Crow
"free from any custom or imposition whatsoever."

Vide 3 and 4. Will. and Mary c. 8.

† *Sect.* 112. By 4 Will. and Mary, c. 5. s. 2. "Four pen
"shall be paid for every pound of bacon imported."

† *Sect.* 113. By 5 Will. and Mary, c. 2. s. 4. "The sa
"sum shall be paid from the first day of the session."

† *Sec*

† *Sect.* 114. And by 3 Geo. 2. c. 20. ſ. 16. "Beef or pork "ſalted with foreign ſalt ſhall receive on exportation 12. 6d. *per* "barrel."

† *Sect.* 115. Eighthly, As to HAY and STRAW, it is enacted, by 2 Will. and Mary, ſeſſ. 2. c. 8. ſ. 16. "That every truſs of "old hay brought or offered to be ſold within the bills of mor- "tality, between 1 Auguſt and 1 June, ſhall contain and be the "full weight of 56lb. at leaſt; and that every truſs of hay "brought, or offered to be ſold, as aforeſaid, between 1 June and "1 Auguſt, being new hay of that ſummer's growth, ſhall be "and contain the full weight of 60lb. and old hay of any former "year's growth the weight of 56lb. as aforeſaid; and if any hay "ſhall be brought, or offered to be ſold, as aforeſaid, whereof "any truſs ſhall be of leſs weight than aforeſaid, the perſon ſo "bringing or offering ſuch hay to be ſold, ſhall forfeit for every "truſs, not being the full weight, eighteen pence."

For the regulation of the hay-market at Weſtminſter. Vide 8 and 9 Will. 3. c. 17.

† *Sect.* 116. And it is further enacted, by 31 Geo. 2. c. 40. "That all ſtraw which ſhall be ſold or delivered in, or brought "in, or expoſed to ſale in London, or within the bills of morta- "lity, ſhall be ſold and delivered in bundles or truſſes, firmly "bound up, and of the full weight of 36lb. of good and ſound "ſtraw, excluſive of any other thing which ſhall be put therein; "and whoever ſhall bring into, or expoſe to ſale, in London, or "within the bills of mortality, or in any place within the diſtance "of thirty miles from the extent of any part of the limits of the "ſaid bills of mortality, when ſtraw ſhall be ſold in bundles or "truſſes, any bundle or truſs of ſtraw which ſhall be of leſs "weight than 36lb. of good and ſound ſtraw, or which ſhall be "in the inſide of a different quality or goodneſs from which on "the outſide it ſhall appear to be, ſhall forfeit twenty pence for "every offence, and the ſum of one ſhilling for every bundle or "truſs of ſtraw."

† *Sect.* 117. And it is further enacted by ſaid ſtatute, par. 2. and 3. "That every truſs of hay ſhall be made up in like "manner as the ſtraw aforeſaid, and that ſuch hay only as ſhall "be good, ſhall be deemed and taken to be the hay which is to "make up the weight every truſs of hay by law ought to be; "and alſo that the pair of bands with which any truſs of hay "ſhall be bound, ſhall not exceed the weight of 5lb. upon pain "of forfeiting for every offence one ſhilling."

† *Sect.* 118. And it is further enacted by par. 4. "That "whoever ſhall bind hay contrary to the directions of this "act, ſhall forfeit three pence for every bundle or truſs of

"hay

"hay or ſtraw, if objected to within twenty-four hours by
"proprietor."

N. B. For the regulation of the markets with reſpect to the ſale of theſe articles. Vide the 6. 7, 8, 9 and 10 ſections of the act.

† *Sect.* 119. And it is further enacted by par. 5, "T
"no perſon who ſhall act as a common ſaleſman in ſelling ha
"ſtraw for any other perſon for gain or reward, or by comm
"ſion in London, or within the bills of mortality, ſhall dire
"or indirectly buy any hay or ſtraw on his own account, o
"than what he ſhall purchaſe to ſpend for his own uſe; an
"any ſuch perſon ſhall buy any hay or ſtraw on his own acco
"to ſell again, or ſhall ſell in London, or within the bills
"mortality, any hay or ſtraw which ſhall have been brought
"him on his own account ſhall forfeit one ſhilling for ev
"truſs."

† *Sect.* 120. Ninethly, As to FRUIT, it is enacted, b
Ann. ſtat. 1. c. 15. ſ. 1. "That the meaſure commonly cal
"*water* meaſure ſhall be round, and in diameter 18 1-
"inches within the hoop, and 8 inches deep, and no more,
"ſo in proportion for any greater or leſſer meaſure; and t
"every ſuch meaſure, by which apples and pears are ſold, ſh
"be heaped as uſually; and that whoever ſhall buy or ſell
"ples or pears by or with any other meaſure, ſhall forfeit
"ſhillings for every offence, half to the informer, and half
"the poor, on conviction by one witneſs, before one magiſtra
"to be levied by warrant of diſtreſs. But this act ſhall not e
"tend to meaſures ſealed and allowed by the company of frui
"rers of London, which are uſed in the ſaid city, or with
"three miles thereof."

N. B. By 8 Geo. 2. c. 20. there was an additional duty of 2s. a buſhel continued for 7 years. By 11 Geo. 1. c. 7.

† *Sect.* 121. And it is further enacted by 10 Geo. 2. c. 2
"That upon all apples imported into Great Britain ſhall be pai
"over and above the duties already impoſed, an additional du
"of two ſhillings a buſhel, and ſo for any greater or leſs qua
"tity, to be paid down in ready money by the importers at t
"time of landing the ſame, which duty ſhall be applied in t
"like manner as other duties upon the ſame article."

† *Sect.* 122. Tenthly, As to HONEY AND WAX, it is ena
ted, by 23 Eliz. c. 8. "That whoever, in the making and me
"ing of wax, ſhall mix or mingle the ſame with roſin, tallo
"turpentine, or any other deceitful thing, to the intent to ſe
"the ſame, or to offer the ſame to be ſold or uttered for wa
"ſhall forfeit the ſame; and if the ſame ſhall happen to be ſo
"before the corruption is diſcovered, the melter, mingler,
"corrupter, or the cauſer or procurer thereof, ſhall forfeit f
"every lb. 2s. half to the queen, half to the party deceived,
"he will ſue for it, or any other perſon that will ſue the ſam
"in any of the queen's courts of record."

† *Se*

† *Sect.* 123. And it is further enacted, par. 2. "That every "melter and maker up of unwrought wax ſhall have a ſtamp of "the breadth of ſixpence, wherein two letters ſhall be plainly "graven, ſignifying his name and ſurname, with which every "piece of wax ſhall be printed or ſtamped triangle in three plac-"es, upon the outſide of the upper part of every piece ſo melted "and caſt, on pain to forfeit the value of every piece of cake "ſold, or offered to be ſold, and not ſo ſtamped or marked."

† *Sect.* 124. And it is further enacted, par. 3. "That who-"ever ſhall melt, mix, work, or ſell any wrought wax, or any "ſtuff or wares wrought with wax, ſhall have a ſtamp or ſeal ſet "to his work, that it may be known who were the workers there-"of, on pain of forfeiting the ſame, half to the queen, or party "deceived, *&c.* as before mentioned."

† *Sect.* 125. And it is further enacted, "That all barrels, "kilderkins, and firkins filled with honey by the maker and fil-"ler, ſhall be marked with two letters ſtanding for his name "and ſurname, each letter of an inch and a half in length at leaſt, "burnt upon the head of the caſk with a hot iron, upon pain of "6*s.* 8*d.* for every package ſold, or offered to be ſold, and not "ſo marked."

† *Sect.* 126. And it is further enacted, "That whoever ſhall "fill and ſell, or cauſe to be filled and ſold, or offered to be "ſold, any barrel, kilderkin, or firkin, with honey, for or in "the name of a barrel, kilderkin, or firkin, containing leſs than "32 wine gallons the barrel, 16 wine gallons the kilderkin, and "8 wine gallons the firkin, ſhall forfeit for every half gallon ſo "lacking, five ſhillings. And whoever ſhall corrupt the honey "ſo ſold with any deceitful mixture ſhall forfeit the barrel or "veſſel, and the honey therein, to be divided between the queen "and the proſecutor."

† *Sect.* 127. And it is provided, "That this act ſhall not "extend to perſons ſelling the wax of their own bees, in ſmall "pieces in open market, nor to ſervants employed by their maſ-"ters in mingling, *&c.* ſo as they will confeſs the ſame."

† *Sect.* 128. "And whoever ſhall counterfeit any of the "ſtamps or marks above mentioned, or ſhall uſe the marks of "another, ſhall forfeit 5*l.* to be recovered and divided as afore-"ſaid, and for non-ſufficiency of payment to be ſet on the pillory "in the next market town, and ſuffer three months impriſon-"ment."

† *Sect.* 129. Eleventhly, As to COALS, it is enacted, by 12 Ann, ſtat. 2. c. 17. "That the coal buſhel ſhall be made "round

" round with a plain and even bottom, nineteen and one h
" inches in diameter, and to contain one *Winchester* bushel, a
" one quart of water. A brass standard of which bushel shall
" kept in the Exchequer."

† *Sect.* 130. And it is enacted by 16 and 17 Car. 2. c.
" That all sea coal brought into the Thames shall be sold by t
" chaldron, containing 36 bushels heaped up, and according
" the bushel sealed for that purpose at Guildhall, and so for
" greater and lesser quantity; and that all other sorts of coa
" sold by weight and not by measure, shall be sold after the pr
" portion of 112lb *averdupois* to the hundred weight, upon pa
" of forfeiture, and of double the value, on conviction by o
" justice where the offence shall be committed, half to the pr
" secutor, and half to the poor, or to the surveyor of the hig
" ways as the magistrate shall direct."

† *Sect.* 131. And it is further enacted by 17 Geo. 2. c. 3
" That any three justices shall be empowered to set the prices
" sea coals, as they, from time to time, shall judge reasonabl
" allowing a competent profit to the retailer, beyond the pri
" paid by him to the importer, *&c.*; and if any ingrosser or re
" tailer of such coals shall refuse to sell as aforesaid, the justic
" taking a constable, may enter the wharf, *&c.* and sell the sam
" returning the produce to such ingrosser or retailer, deductin
" the charges; but no interested person shall be engaged in se
" ting such price as aforesaid." (6)

(6) For the regulation respecting coals within the bills of mortality, vide 3 Geo. 2. c. 26. 11 Geo. 2. c. 15. 19 Geo. 2. c. 35. 20 Geo. 2. c. 49. 23 Geo. 2. c. 26, 1 Geo. 2. c. 27. 7 Geo. 3. c. 23. 23 Geo. 3. c. 24.

CHAPTER THE EIGHTY-FIRST.

OF BARRATRY.

Minshew. Dufresne. Spelman.

IN treating of Barratry, I shall consider: First, Who shall be said to be a Barrator. Secondly, In what manner such an offender is to be proceeded against. Thirdly, To what punishment he is liable.

Dalt. p. 35. Co. Lit. 368. 8 Coke 36. 2 Croke 527.

Sect. 1. As to the first point it seems, That a Barrator is a common mover, exciter, or maintainer of suits or quarrels, either in courts, or in the country.

Sir

Sect. 2. And it is said not to be material, whether the courts wherein such suits are commenced, be of record or not, or whether such quarrels in the country relate to a disputed title of possessions or not; but that all kinds of disturbances of the peace, and the spreading of false rumours and calumnies, whereby discord and disquiet may grow among neighbours, are as proper instances of barratry, as the taking or keeping the possession of lands in controversy. Co. Lit. 368. 8 Coke 36.

Sect. 3. But it hath been holden, That a man shall not be adjudged a barrator in respect of any number of false actions brought by him in his own right. However if such actions be merely groundless and vexatious without any manner of colour, and brought only with a design to oppress the defendant, I do not see why a man may not as properly be called a barrator for bringing such actions himself, as for stirring up others to bring them. 1 R. Abr. 355. 3 Modern 98. 8 Coke 36.

Sect. 4. But it seems that an attorney is in no danger of being adjudged guilty of an act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 3 Mod. 97, 98.

Sect. 5. Also it seems clear, That no one can be a Barrator in respect of one act only; for every indictment for such crime must charge the defendant with being *communis barractator*. 8 Coke 36.

Sect. 6. It seems to have been holden, That a feme covert cannot be indicted as a common barrator; but this opinion seems justly questionable; for since a feme covert is as capable of exciting quarrels, in the frequent repetition whereof the notion of barratry seems to consist, as if she was sole, why should she not as properly be indictable for it? 2 Rolle 39. See chap. 1. sect. 13.

Sect. 7. As to the second point, *viz.* In what manner offenders of this kind are to be proceeded against, it is enacted by 34 Edw. 3. c. 1. "That in every county shall be assigned for "the keeping of the peace one lord, and with him three or "four of the most worthy of the county, &c. and that they shall "have power to restrain offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence; and so cause them to be "imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall "seem best to do by their discretions and good advisement, "&c."

Sect. 8. It seemeth from these words, That justices of peace (as such) have cognizance of barratry without any other commission, *sed quære*; for the contrary opinion seems to have been holden in Rolle's Reports. Con. B. 2. c. 8. s. 38, 39. Yelverton 46. 2 Rolle 151.

Sect.

1 Modern 288. 1 Sid. 282. C. Jac. 526.

Sect. 9. However it ſeems clear, that no general indict of this kind, charging the defendant with being a common preſſor, and diſturber of the peace, and ſtirrer up of ſtrife am neighbours, is good, without adding the words *communis ractator*, which is a term of art appropriated by the law to purpoſe.

(*a*) 2 R. Ab. 79. 82. C. Jac. 527. C. Car. 340. 2 Keb. 409, 410. C. Eliz. 148.

Sect. 10. (*a*) Alſo it ſeemeth to be certain, That an ind ment of Barratry concluding *contra formam ſtatuti*, is good, no ſtatute be made directly againſt it, but only for the pun ment of it, ſuppoſing it an offence at common law.

(*b*) 2 Keb. 410. C. Eliz. 295. Con. Lat. 194. 2 Hale 180. Palmer 450. 1 Rolle 295.

Sect. 11. (*b*) Alſo it hath been holden, That an indict of this kind may be good, without alledging the offence at certain place, becauſe from the nature of the thing, conſiſ in the repetition of ſeveral acts, it muſt be intended to h happened in ſeveral places; for which cauſe it is ſaid, Th trial ought to be by a jury from the body of the county.

(*c*) C. Jac. 527.

Sect. 12. (*c*) But it hath been reſolved, That ſuch an ind ment is not good, without concluding *contra pacem*, &c. for is an eſſential part of it.

(*d*) 5 Mod. 18. 1 Ld. Ray. 490. 12 Mod. 516. 2 Atkyns 340.

Sect. 13. (*d*) Alſo it ſeemeth to be ſettled practice, no ſuffer the proſecutor to go on in the trial of an indictment of kind, without giving the defendant a note of the particular m ters, which he intends to prove againſt him; for otherwiſ will be impoſſible to prepare a defence againſt ſo general uncertain a charge, which may be proved by ſuch a multipl ty of different inſtances.

Hutton 104.

Sect. 14. As to the third point, *viz.* In what manner fenders of this kind are to be puniſhed. It is ſaid, That if t be common perſons, they are to be fined and impriſoned, bound to their good behaviour; and if they be of any profeſſ relating to the law, that they ought alſo to be farther puniſh by being diſabled to practiſe for the future.

Vide 1 Dan. Ab. 211, 213.

CHAPTER THE EIGHTY-SECOND.

Of USURY.

OFFENCES, under the degree of capital, more imm diately againſt the ſubject, not amounting to an act diſturbance of the peace, which may be committed by priva perſo

without any relation to an office, and which are neither enormous nor grossly scandalous, and more immediately affect the interests of particular persons, seem to be reducible to the following heads. Usury. Maintenance. And The offence of buying or selling pretended titles.

In treating of USURY, I shall consider: First, What it is. Secondly, How it is restrained by common law. Thirdly, How by statute.

Sect. 1. And first it seems, that usury, in a strict sense, is a contract upon the loan of money to give the lender a certain profit for the use of it, upon all events, whether the borrower make any advantage of it, or the lender suffer any prejudice for the want of it, or whether it be repaid on the day appointed, or not. Woods Inst. B. 3. p. 425. 3 Inst. 151. B. Usury, 12. 2 Strange, 816. 1243. 4 Comm. 156. 2 Comm. 455.

Sect. 2. And in a larger sense it seemeth, That all undue advantages taken by a lender against a borrower come under the notion of usury, whether there were any contract in relation thereto, or not; as where one in possession of land, made over to him for the security of a certain debt, retains his possession after he hath received all that is due from the profits of the land. Gibs. 1070. Cowper 793.

Sect. 3. But it hath been resolved, That an agreement to pay double the sum borrowed, or other penalty on the non-payment of the principal debt at a certain day, is not usurious, because it is in the power of the borrower, wholly to discharge himself, by repaying the principal according to the bargain. 2 R. Abr. 801. 802. 26 Edw. 3. 71. 2 Inst. 89. 5 Rep. 69. Cowper 113.

Sect. 4. As to the second point, viz. How usury is restrained by the (a) common law. It is said, That anciently it was holden to be absolutely unlawful for a christian to take any kind of usury, and that whosoever was guilty of it, was liable to be punished by the censures of the church in his life time; and that after death any one was found to have been an usurer while living, all his chattels were forfeited to the king, and his lands escheated to the lord of the fee. (a) 3 Ist 151. 2 R. Abr. 800. 801. 2 Inst. 506, 507. Palm. 293. 294. Tempus Hardwick 420.

Sect. 5. Also it seemeth to have been the opinion of the makers of some late acts of parliament, as 5 Edw. 6. c. 20. 13 Eliz. c. 8. s. 5. and 21 Jac. 1. c. 17. s. 5. That all kinds of usury are contrary to good conscience. 2 Ventris 42. 2 Vern. 145. Eq. Ca. Ab. 288.

Sect. 6. (b) And agreeably hereto it seemeth formerly to have been the general opinion, That no action could be maintained on any promise to pay any kind of use for the forbear- (b) 2 R. Ab. 801. 26 Ed. 1. 71. 1 R. Abr. 18.

2 Roll. 239, 240, 469. Palm. 293.

forbearance of money becauſe that all ſuch contracts were thou to be unlawful, and conſequently void.

(a) 1 R. Abr. 25. 2 R. Abr. 781, 802 Winch. 114. 120. C. Jac. 378, 379. 1 Ven. 198, 199 3 Keble 15. C. Car. 273.

Sect. 7. But it ſeems to be generally agreed at this d (a) That the taking of reaſonable intereſt for the uſe of mo is in itſelf lawful, and conſequently that a covenant or pron to pay it, in conſideration of the forbearance of a debt, maintain an action: For why ſhould not one who has an eſ in money be as well allowed to make a fair profit of it, as a ther who has an eſtate in land? And what reaſon can there that the lender of money ſhould not as well make an advan of it as the borrower? Neither do the paſſages in the *Moſa* law, which are generally urged againſt the lawfulneſs of uſury, if fully conſidered, ſo much prove the unlawfulneſs the lawfulneſs of it; for if all uſury were againſt the moral l why ſhould it not be as much ſo in reſpect of foreigners, whom the Jews were expreſly allowed to take it, as in reſpec thoſe of the ſame nation, of whom alone they were forbidde receive it? From whence it ſeems clearly to follow, That prohibition of it to that people was merely political, and c ſequently doth not extend to any other nation.

Exod. c. 22. v. 25. Levit. c. 25. v. 36. 37. Deuter. c. 23. v. 19, 20.

37 H. 8. c. 9. 13 Eliz. c. 1. B. R. H. 233. 2 Strange 1043.

Sect. 8. As to the third point, *viz.* How uſury is reſtrai by ſtatute. It is enacted by 12 *Ann.* c. 16. "That no per "whatſoever, ſhall upon any contract take, directly or in "rectly, for loan of any money, wares, merchandize, or ot "commodities whatſoever, above the value of five pounds, "the forbearance of one hundred pounds for a year, and ſo "ter that rate for a greater or leſſer ſum, or for a longer "ſhorter time; and that all bonds, contracts, and aſſuran "whatſoever, for payment of any principal, or money to be le "or covenanted to be performed upon or for any uſury, whe "upon or whereby there ſhall be reſerved (b) or taken abo "the rate of five pounds in the hundred, as aforeſaid, ſhall "utterly void."

(b) Though the reſervation be of ſo much if requeſted; and the requeſt is never made.

3 Atk. 154. 3 Keble 259. 260. 1 Vent. 253. 3 Wilſ. 250.

And it is further enacted, "That all and every perſon "perſons whatſoever, which ſhall upon any contract ta "accept, and receive, by way or means of any corrupt b "gain, loan, exchange, chevizance, ſhift, or intereſt of a "wares, merchandize, or other thing or things whatſoev "or by any deceitful way or means, or by any covin, engi "or deceitful conveyance, for the forbearance or giving day "payment for one whole year, of and for their money "other thing, above the ſum of five pounds for the forbe "ing of one hundred pounds for a year, and ſo after that r

"for a greater or leſſer ſum, or for a (a) longer or ſhorter "term, ſhall forfeit and loſe for every ſuch offence the treble "value of the money, wares, merchandize, and other things "ſo lent, bargained, exchanged, or ſhifted."

(a) Vide C. Jac. 25. Moor 644. Noy. 41. C. Car. 283. 4 Leonard 43. C. Eliz. 20. Douglas 224. 3 Leo. 205. 2 Leo. 38.

And note, That the treble value is not forfeited, unleſs ſomething be taken above the legal rate. But the very contract alone avoids the ſecurity. (1)

(1) *C.* borrowed 100*l.* of *B.* on his bond conditioned to repay the ſame at ſix months, with 5 per cent. per ann. and gave two guineas to *B.* at the time the money was advanced, as a premium for the loan. The principal, and 2*l.* 10*s.* intereſt, were repaid at the end of ſix months. Under the firſt branch of the ſtatute, the bond is void; but under the ſecond the uſury was not compleat till the half year's intereſt was received, for the penalty is incurred only by *taking*, *accepting*, and *receiving* more than legal intereſt. Douglas 224. 3 Wilſon 262. 2 Black. 796. For to conſtitute the offence three things muſt concur: 1. A contract between the parties. 2. Monies, or other things lent. 3. Above 5 per cent. per ann. *received* by the lender for forbearance. 3 Wilſon 362. 4 Burn 2252.

Sect. 9. And it is farther enacted by the ſaid ſtatute, "That every ſcrivener, broker, ſolicitor, and driver of bar-"gains, for contracts, who ſhall take or receive, directly or "indirectly, any ſum or ſums of money, or other reward or "thing, for brokage, ſoliciting, driving or procuring the loan, "or forbearing of any ſum or ſums of money, over and above "the rate or value of five ſhillings for the loan, or forbearing of "one hundred pounds, for a year, and ſo rateably; or above "twelve pence, over and above the ſtamp duties, for making "or renewing of the bond or bill for loan, or forbearing there-"of, or for any counterbond or bill concerning the ſame, ſhall "forfeit for every ſuch offence twenty pounds, with coſts of ſuit, "and ſuffer impriſonment for half a year; the one moiety of all "which forfeitures ſhall be to the queen, the other to him that "will ſue for the ſame, in the ſame county where the ſeveral "offences are committed, *&c.*

And the contract is void. Carth. 252.

The expoſitions which were made of the former ſtatutes of uſury being equally applicable to this, which is penned almoſt in the very ſame words, I ſhall take notice of the principal of them.

1 Atk. 340. 1 Vez. 142.

Sect. 10. Firſt, That a contract made before the ſtatute is no way within the meaning of it, and therefore that it is ſtill lawful to receive ſix *per cent.* in reſpect of any ſuch contract.

14 Geo. 3. c. 79. Daliſ. 12. Con. Raym. 197.

Sect. 11. Secondly, That a bond made to ſecure a juſt debt payable with lawful intereſt, ſhall not be avoided by reaſon of a corrupt agreement between the obligors, to which the obligee was no way privy: As where *A.* being indebted to *B.* in 100*l.* agrees to give him 30*l.* for the forbearance of that 100*l.* for a year,

Salkeld 344. Com. 4. 6. 5 Com. Dig 610. 2 And 121. Moor 752. C. Jac. 32, 33. Yelverton 47. 2 Burr. 1077.

7 Modern. 118. 2 Strange 1249. B. Nis P. 27. Carthew 356.

year, and gives him a bond of 60*l.* for payment of the 30*l.* for the payment of 100*l.* enters into a bond of 200*l.* toge with B. for the payment of a true debt of 100*l.* due from C. 2)

(2) But a bill of exchange for 200*l.* for which goods instead of money had bee lourably advanced, is void, although in the hands of an innocent indorsee, for a valu consideration, and without notice of the usurious contract of the original parties. D las 708 to 716.

2 Modern 69. 3 Keble 142. 2 Modern 307. 1 Saund. 294. Raym. 196. 2 Keble 525. 690. 3 Salkeld 390. 1 Bulf. 17. 2 Roll. 398. Cowper 114.

Sect. 12. Thirdly, That the receipt of higher interest, is allowed by the statute, by virtue of an agreement subseq to the first contract, does not avoid an assurance fairly m and agreeable to the statute, but only subjects the party to forfeiture of treble value; for the words are, "That all a "rances for the payment of any principal, &c. whereupo "whereby there shall be reserved or *taken* above the rate of "in the hundred, &c. shall be utterly void."

Ray. 196. 1 Freem 253. Expressly confirmed by Lord Mansfield, Floyer v. Edwards, Cowper 114. Yet Lord Hardwick said, That if a mortgage be dr for only 5 per cent. and the mortgagee afterwards take above the legal interest, the would be void upon the word *take*. 3 Atkins 154.

Noy 37. 1 Leon 96.

Sect. 13. Fourthly, That in an assurance for the payment fifty shillings for the use of 100*l.* for six months, the computat shall be by calendar and not by lunar months, because by the l ter the interest would exceed the rate allowed by the statute.

1 Bulf. 17, 20. Yel. 30, 31. Noy. 171. 2 Keble 690. Con. 1 Leon. 96.

Sect. 14. Fifthly, That the receipt of interest before the ti when it is in strictness due, being voluntarily paid by the deb for the greater convenience of the creditor, or for any other fu like consideration, without any manner of corrupt practice, any previous agreement of this kind at the making of the f contract, does not make the party liable to the forfeiture of t treble value.

4 Leon. 208. 3 Wilf. 390, 396. 1 Bulf. 36. 1 And. 121. C. Jac. 253, 618, 507, 618. Noy 151. 2 Lev. 7, 8. Vid. 2 R. Abr. 782. H. 1, 1 Vez. 164. 17 Geo 3. c. 26. 1 Atk. 339, 351. C. El 27. 642, 643. 2 Black. 859. Cowp. 728. Confirmed by Ld. Thurlow, Hil. 21 Geo. Brown's Rep. Chan. 93. Ld. Irnham v. Child.

Sect. 15. Sixthly, That the grant of an annuity for lives n only exceeding the rate allowed for interest, but also exceedi the known proportion for contracts of this kind, in consideran of a certain sum of money, is not within the meaning of the st tute, unless there were some underhand bargain for the secur of the repayment of the principal or consideration-money.

C. Jac. 208, 509 Hard. Jay v. Kent. 1 Keble 539. 711.

Sect. 16. Seventhly, That no contract is usurious, which the lender runs the hazard of losing all his money, bo principal and interest: As where on the loan of a certain su for a year, for the victualling of a ship, it is agreed, That

ſhip return, the lender ſhall have ſo many thouſand fiſhes at a rate, which exceeds the intereſt allowed by the ſtatute, if the ſhip never return, or if it periſh by unavoidable caſualties of ſea, fire, or enemies, that then he ſhall have nothing: where on the loan of 30*l.* a bond is given for the payment of 60*l.* on the marriage of a daughter of one of the parties; provided, That if either of them ſhould die before, that then nothing ſhould be paid: but it is clear, That if the intereſt only be hazarded on ſuch a contract, and the whole principal ſecured, the whole is uſurious. Alſo it hath been reſolved, That an agreement to pay more than the lawful intereſt for the loan of a certain ſum on ſuch a day, if *A. B.* ſhall be then alive, and if he ſhall be dead, then to pay ſuch a ſum which is leſs than the principal, is void by the ſtatute; for if ſuch a contingency would exempt the caſe out of the ſtatute, by the ſame reaſon twenty lives might be added, and the ſtatute wholly evaded. (3)

1 Atk. 340. 2 Roll. 48. 2 Black. 803. 1 Lev. 54. 1 Sid. 27. Showers Rep. 8. 3 Keble 304. Said to be no good law. 1 Atk. 341. Vide C. Eliz. 741. 2 Roll. 48. C. Jac. 508. Cowp. 794. 5 Coke 70. 1 Atk. 340. Moor. 397. C. Eliz. 642, 643, 741.

Lutw. 468, Carth. 68. Comb. 25. 1 Show. 8.

(3) Therefore a loan of 5000*l.* to be paid 1000*l.* on the death of *A.* in the life-time of *B.* is not uſurious. 1 Atk. 339, 350.—If the contingency goes to the intereſt only, though real and not colourable, and notwithſtanding it be a hazard, yet it is uſurious. If the contingency relates to both principal and intereſt, and a higher rate of intereſt is taken, the courts have there enquired whether it were colourable or not, for if I lend 100*l.* to have 120*l.* at the year's end upon a caſualty, if the caſualty goes to the intereſt only, and not to the principal, it is uſury for the party is ſure to have the principal again, come what come will. But if the principal and intereſt are little in hazard, it is not uſury. *A.* gave credit to *B.* for jewels to a certain amount. *B.* not being able to raiſe money upon them, deſired that *A.* would exchange them for old plate. *A.* ſaid old plate was as good as money, and accordingly gave him the value of as much old plate as was leſs by 500*l.* than what the jewels had been ſold for; *for the whole amount of which B. was to ſtand indebted.* The Court thought this did not come under the deſcription of uſury. Johnſon qui tam v. Pickett, &c. B. R. Eaſt. 1785. But ſee 1 Atk. 351. But if theſe loans are merely colourable, they may be uſury. 1 Atk. 341. And it is the intent of the agreement, and not the expreſſion, that determines it to be a loan, or a riſque. 1 Atk. 346. And where more than 5 *per cent.* is taken, if the ſubſtance of the contract be a borrowing and a lending, a ſlight colourable contingency only will not take it out of the ſtatute. Cowper 70.

Sect. 17. Eighthly, That an aſſurance made in purſuance of a fair agreement for ſuch intereſt as is allowed by the ſtatute, ſhall not be avoided by the fault of the ſcrivener, who draws it up in ſuch a manner as to bring it within the expreſs letter of the ſtatute: As where the parties agree, That 5*l.* ſhall be paid for the loan of 100*l.* for a year, and the ſcrivener, in drawing the bond for it, doth, without the knowlege of the parties who are illiterate perſons, make the 5*l.* payable at the end of half a year: or where on the fair loan of 100*l.* agreed to be paid with common intereſt, a mortgage is made for the 100*l.* with a proviſo, that it ſhall be void on payment of 105*l.* at the end of one year, without any covenant for the mortgagor to take the profits till default be made of payment, ſo that in ſtrictneſs the mortgagee is entitled both to the intereſt and profits.

C. Jac. 677. 678. 2 Roll. 414, 415. Het. 11. 1 Jon. 396. C. Car. 501. 2 Ven. 83. 3 Wilſ. 396. Hard. 428. 1 Freem. 264. 2 Mod. 307. 2 Ro. Abr. 793. 798, 5.

Sect.

5 Co. 70. Cowper 114, 115.

Sect. 18. Ninth, That the loan of money for lawful inte allowed by the ſtatute, ſhall not be conſtrued to be within purview of it, in reſpect of any expectations which the le may have of a voluntary gratuity to be given him by the borr er, if there be no kind of agreement relating to it.

5 Co. 69. C. Jac. 539. Cowper 113. 2 Burr. 715. C. Eliz. 643. 1 Lut. 464. 2 Bur. 891. 1 Atk. 342. 1 Atk. 351. 5 Co. 69. See Mo. 397. 2 And. 16. 1 Atk. 350. Cowper 794. 2 Strange 1243.

Sect. 19. Tenth, That the reſervation of a greater ſum is allowed by the ſtatute for intereſt, upon the non-paymen the principal at the end of the year is not uſurious within ſtatute, becauſe it is in the power of the borrower to avoid payment of the money ſo reſerved, by paying the principa the day appointed; yet it ſeemeth clear, that if it were or nally agreed, that the principal money ſhould not be paid at time appointed, and that ſuch clauſe was inſerted only wit intent to evade the ſtatute, the whole contract is void; for conſtruction of caſes of this nature muſt be governed by the cumſtances of the whole matter, from which the intention of parties will appear in the making of the bargain, which, i was in truth uſurious, is void, however it may be diſguiſed b ſpecious aſſurance. (4)

(4) In all queſtions in whatever reſpect repugnant to the ſtatute, the nature and ſ ſtance of the tranſaction, and the view of the parties muſt be aſcertained to ſatisfy court that there is a *loan and borrowing*, and where the real truth is a *loan of money*, the of man cannot find a ſhift to take it out of the ſtatute, and though the ſtatute menti only "for loan of monies, wares, merchandizes and other commodities," yet any ot contrivance, if the ſubſtance of it be *a loan* will come under the word "indirect Cowper 115, 796. Douglas 712. If a man borrow under the colour of buying, i uſurious Ibid. 116. But if goods are ſold to be paid for at the expiration of th months, or to allow the ſeller ſuch an additional profit as exceeds the legal rate of inter yet it is not uſury. Floyer *v.* Edwards. Plumb. *v.* Carter. Cowp. 112. 116.

(a) 5 Co. 80. 9 Co. 35. 1 Jon. 203. 1 Roll. 41, 42. 2 Ven. 83. 108. 2 Leon. 166. Con. C. Eliz. 25. 588. 1 Sid. 182.

Sect. 20. Eleventh, That a fine (a) levied, or judgment ſ ſered, in purſuance of an uſurious contract, may be avoided an averment of the corrupt agreement, as well as any comm ſpecialty, or parol contract. And in an *aſſumpſit* (b) if it a pear, either upon the evidence, or from the plaintiff's own e preſs ſhewing in his declaration, that the contract was uſurio he cannot recover. But a ſpecialty cannot be avoided by uſu appearing on evidence or on the face of the condition, but muſt be pleaded.

(b) Salk. 22. Skin. 431, 442. Lut. 273. Co. Eliz. 588. Cowper 728. Strange 1043. B. R. H. 233.

Or the court may direct an iſſue to try the uſurious contra

(c) C. Jac. 262. 508. 2 Roll. 447. 1 Ley. 7, 8. (d) Lutw. 273, 466.

Sect. 21. Twelfth, That it is not (c) material whether t payment both of the principal and alſo of the uſurious intere be ſecured by the ſame (d) or by different conveyances, but th all writings whatſoever for the ſtrengthening ſuch a contract, a void.

Sect. 22. Thirteenth, That a contract reſerving to t lender a greater advantage than is allowed by the ſtatute, equal

equally within the meaning of it, (e) whether the whole be reserved by way of intereſt, or in part only under that name, and the part by way of rent for a houſe, let at a rate plainly exceeding the known value.

(e) C. Jac. 440. Cowp. 795. Doug. 223. Noy 151. 3 Wilſ. 250. 2 Blac. 792. C. Eliz. 20.

Sect. 23. Fourteenth, That a ſecond bond made after the forfeiture of a former, and conditioned for the receipt of intereſt according to the penalty of the forfeited bond, is as much within the ſtatute as if it had been made before the forfeiture; for if ſuch a practice ſhould be allowed, nothing could be more eaſy than to elude the ſtatute; and though the whole penalty be due in ſtrictneſs to the obligee, yet the true principal debt is in conſcience no greater after the forfeiture of the bond than it was before.

3 Keble 142. Con. Noy. 2.

Sect. 24. Fifteenth, That in pleading an uſurious contract by the way of bar to an action, you muſt ſet forth the whole matter eſpecially, becauſe it lay within your own privity; but that in an information on the ſtatute for making ſuch a contract, it is ſufficient to ſet forth the corrupt bargain generally, becauſe matters of this kind are ſuppoſed to be privily tranſacted, and ſuch information may be brought by a ſtranger.

1 And 49. 1 Sid. 285. 3 Modern 35. 1 Keble 629. Noy 143. Cro. Jac. 440. Vide C. Car. 501. Precedents. 2 Ven. 81. Lutw. 468. Co. En. 168. Clift 185. Bro. V. M. 255. Jones 413. Cowp. 72.

Sect. 25. Sixteenth, (f) That in every ſuch information it is neceſſary expreſsly to ſet forth the place, where the corrupt bargain was made. (5)

(f) 1 Leon. 96. 97.

(5) The time is ſo eſſential, and muſt be exactly laid, but if it is the true time it is ſufficient if laid under a videlicet. Cowper 114. Therefore on a draft dated the 14th, but not ſigned till the 16th, and the day was laid on the 14th, it was held bad. So alſo the time muſt be preciſely proved. Therefore where the time of payment was laid to be on a particular day, and it appeared that the time of payment was two years it was held a fatal variance, for the contract muſt be proved as it is laid. Cowper 671.

Sect. 26. Seventeenth, That if an uſurious contract in the county of *D.* be pleaded in bar to an action on a bond ſaid to be made in the county of *E.* the trial ſhall be in the county of *D.* becauſe the ground of the matter is the uſurious contract, and the bond is confeſſed by the plea.

1 Leon 148, 149.

Sect. 27. Eighteenth, That he who hath agreed to pay money upon an uſurious contract, ſhall not be admitted to give evidence upon an information againſt the uſurer, unleſs he have paid off the whole debt; for by ſuch means a man might avoid his own act and deed.

Hardneſs 331. Co Lit. 6. b. 2 Roll. 685. 2 Raym. 191. b. 2. c. 46. ſ. 24. 1 Vent. 49. 1 Salk. 285.

2 Str. 1043. Strange 633. 498. And it has been decided that the borrower who repays the money is himſelf, a good witneſs to prove ſuch repayment, and alſo the uſurious contract. Abrahams *qui tam* v. Bunn. 4 Burrow 2256. Vide alſo De Grey's opinion, 3 Wilſon 262. And the borrower may be a witneſs, though the money is not repaid if the uſury neither affects the debt or avoids the contract, and where the matter is doubtful the objection ſhall only go to the credit and not to the competency. Ibid. See the caſe of Fitzroy v. Guillim, Durnford and Eaſt 153.

Sect.

1 Leon. 95. 96, 2 Strange 1243. 1043. 1 Wilson 268.

Sect. 28. Nineteenth, That an information for an usurious contract on a loan of money, cannot be supported by evidence of such a contract on a bargain concerning wares sold.

Vide 1 Modern 174. whether an indictment will lie on 12 Ann. also Strange 816. Ray. 1144. 2 Salk 680. And whether the prosecutor may compound. Barnes 118.

The plaintiff may reply *quod non corrupte agreatum fuit. Quod licite bargainizavit* with traverse of the corrupt agreement. Cl. Ass. 324. So on a note, the plaintiff may reply that the note was given for a just debt, *absque hoc* that is agreed *modo & forma*, as the defendant pleads. Hardw. Cases 287.

On a bill to set aside an usurious contract the defendant may demur to the discovery what interest he agreed to take, because he cannot set that forth without disclosing every interest he has taken. 2 Atk. 393.

The bank may borrow money at more than 5 *per cent.*

† *Sect.* 29. It is enacted by 3 Geo. 1. c. 8. f. 39. "That the governor and company of the Bank of England shall have authority to borrow or take up money upon any contracts, bills, bonds, or obligations, under their common seal, or upon credit of their capital stock or otherwise for any time or to be paid upon demand and at such rate of interest as they shall think fit, although the same shall happen to exceed the rate of interest allowed by law, and to give such security to the lenders as they shall approve."

† *Sect.* 30. And by 14 Geo. 3. c. 79. which was made to explain the 12 Ann before recited, it is further enacted, "That all mortgages and securities made and executed in Great Britain of or concerning any lands, tenements, hereditaments, slaves, cattle, or other things lying or being in any of the colonies, plantations or dominions of the *West Indies*, or any estate or interest to any of the king's subjects, for securing the re-payment of the sum of money thereon respectively really and *bona fide* advanced and lent with interest for the same; and all securities for the same; and all transfers and assignments of the same executed in Great Britain shall be good and valid; and that none shall be liable to the penalties of 12 Ann by receiving or taking interest for the money really advanced on such mortgage, security, bond, covenant, transfer and assignment at the rate of interest allowed and established by the law of the place where the mortgaged premises shall lie or are, and by par. 2. if the premises shall lie in Ireland, interest may be taken on securities executed as aforesaid not exceeding six *per cent.* per *annum.*"

CHAP.

CHAPTER THE EIGHTY-THIRD.

OF MAINTENANCE.

MAINTENANCE is commonly taken in an ill ſenſe, and in general ſeemeth to ſignify an unlawful taking in hand, or upholding of quarrels or ſides, to the diſturbance or hindrance of common right, and is ſaid to be two-fold: Co. Lit. 368, 2 Inſt. 208, 212, 503.

Sect. 2. Firſt, *Ruralis*, or in the country; as where one aſſiſts another in his pretenſions to certain lands, by taking or holding the poſſeſſion of them for him by force or ſubtilty, or where one ſtirs up quarrels, and ſuits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is puniſhable at the king's ſuit by fine and impriſonment, whether the matter in diſpute any way depended in plea or not, but is ſaid not to be actionable. Co. Lit. 36. 2 Inſt. 213. 1 Ric. 2. c. 4. 2 Ric. 2. 3.

Sect. 3. Secondly, *Curialis*, or in a court of juſtice, where one officiouſly intermeddles in a ſuit depending in any ſuch court which no way belongs to him, by aſſiſting either party with money or otherwiſe, in the proſecution or defence of any ſuch ſuit. Pult. 25. 2 Inſt. 208. 2 R. Abr. 115. 7.

Of this ſecond kind of maintenance there ſeem to be three ſpecies: Firſt, where one maintain another without any contract to have part of the thing in ſuit, which generally goes under the common name of Maintenance. Secondly, where one maintains one ſide, to have part of the thing in ſuit, which is called Champerty. Thirdly, where one labours a jury, which is called Embracery. Co. Litt. 368.

For the better underſtanding of the firſt of the abovementioned ſpecies, I ſhall examine: Firſt, what ſhall be ſaid to amount to an act of maintenance. Secondly, in what reſpects ſome ſuch acts may be juſtified. Thirdly, how far offences of this kind are reſtrained by the common law. Fourthly, how far by ſtatute.

Sect. 4. As to the firſt point, it ſeemeth clear, That whoever aſſiſts another with money to carry on his cauſe, as by retaining one to be of counſel for him, or otherwiſe bearing him out in the whole or part of the expence of the ſuit, may properly be

be ſaid to be guilty of an act of maintenance, as it ſeems to be taken for granted in the (a) books cited in the margin.

(a) 28 H. 6, 7. 12. 34 H. 6. 25, 26. 9 E. 4. 32. 21 H. 7. 40. 6 E. 4, 5. 12 E. 4, 3. 31 H. 6, 9. B. Maint. 7. 14. 20. 24. 43. 44. 52. 2 R. Abr. 118. 6 Mo. D. 2. Rol. 77.

Sect. 5. Alſo it is ſaid, That not only he who lays out money to aſſiſt another in his cauſe, but alſo that he who by friendſhip or intereſt ſaves him that expence which he might otherwiſe be put to, or but endeavours ſo to do, is alſo guilty of maintenance; as where (b) one perſuades, or but endeavours to perſuade a man to be of counſel for another *gratis*.

(b) 28 H. 6, 7. 12. 34 H. 6, 25. 9 E. 3. 32. Main. 6, 7, 20.

Sect. 6. Alſo it is ſaid, That all ſuch perſons may properly be called maintainers, who give, or but endeavour to give, any other kind of aſſiſtance to either of the parties, in the management of the ſuit depending between them: as (c) by opening the evidence to the jury; or by (d) giving evidence officiouſly without being called upon to do it; or by ſpeaking in the cauſe; (e) one of counſel with the party; or by (f) retaining an attorney for him; or (g) perhaps for barely going along with him to enquire for a perſon learned in the law.

(c) 22 H. 6, 5. Main. 14. C. Eliz. 735. (d) 28 H. 6, 6. 11 H. 641. Main. 5, 51. Main. 10. 2 R. Abr. 118. (e) Het. 78, 79. (f) 1 R. Abr. 593. (g) 19 E. 4, 3. 12 E. 4. 14. Het. 79.

Sect. 7. Alſo it hath been ſaid, That thoſe ſhall come under the like notion, who give any public countenance to another in relation to any ſuch ſuit; as where one of great power and intereſt ſays (h) publicly, that he will ſpend twenty pounds on one ſide, or that he will give twenty pounds to labour the jury, whether in truth he ſpend one penny or not; or where ſuch a perſon (i) comes to the bar with one of the parties, and ſtands by him while his cauſe is tried, whether he ſay any thing or not; for ſuch kinds of practices do not only tend to diſcourage the other party from going on in his cauſe, but alſo to intimidate juries from doing their duty. But it ſeems, that a bare (k) promiſe to maintain another, is not in itſelf maintenance, unleſs it be either in reſpect of the public manner in which, or the power of the perſon by whom, it is made.

(h) 22 H. 6. 5. Main. 14. Main. 8. (i) 22 H. 6. 6. 11 H. 6. 39. 19 E. 4. 3. Main. 51. (k) 9 H. 7. 18. B. Champ. 9.

Sect. 8. Alſo it is ſaid to be as much maintenance for a (l) juror, as for any other perſon, to ſolicit a judge to give judgment according to the verdict, becauſe after a juror has given his verdict, he has nothing more to do: But it is ſaid to be no

(l) B. Main. 40. 3 S E. 4. 1. 2. 17 E. 4. 5. B. Main. 39.

no maintenance for a juror to exhort his companions to join with him in giving such a verdict as seems to him to be right.

Sect. 9. However it seems clear, (m) That a man is in no danger of being judged guilty of an act of maintenance, for giving another friendly advice, what action is proper for him to bring for the recovery of a certain debt, or what method it is fittest to take to free him from such an arrest, or what counsellor or attorney is likely to do his business most effectually; for it would be extremely hard to make such neighbourly acts of kindness, which seem rather commendable than blame-worthy, to come under the notion of maintenance, which always seems to imply a contentious and over-busy intermeddling in other mens matters, in which respect it is so highly criminal. Yet it is said, that a man of great power not learned in the law, may be guilty of maintenance, by telling another who asks his advice, that he has a good title.

(m) 12 E. 4. 14. 19 E. 4. 3. 22 H. 6. 5. B. Main. 17. 3 R. Abr. 118. 2 Inst. 564. Moor 6. F. Main. 21. 2 Roll. 181. Co. Litt. 364. 2 Leon. 48.

Sect. 10. Also it hath been said, that no one can be guilty of maintenance, in respect of any money given by him to another before any suit is actually commenced; yet if it plainly appear, that it was given merely with a design to assist him in the prosecution or defence of an intended suit, which afterwards is actually brought; surely it cannot but be as great a misdemeanor in the nature of the thing, and equally criminal at common law, as if the money were given after the commencement of the suit, though perhaps it may not in strictness come under the notion of maintenance.

3 H. 6. 54. F. Main. 18. B. Main. 1. If a mortgagee, not a party in the suit, advances money to support the title it is not maintenance. 3 P. W. 375.

Sect. 11. However it is certain, That one may as properly be said to be guilty of maintenance, within the meaning of the words *ad huc manu tenet*, in an action of maintenance, for supporting another after judgment, as for doing it hanging the plea; because the party grieved may be discouraged thereby from bringing a writ of error or attaint.

47 Ed. 3. 10. B. Champ. 2.

As to the second point, *viz.* In what respects some acts of this kind may be justified, I shall consider the following particulars: First, how far they are justifiable in respect of an interest in the thing in variance. Secondly, how far in respect of kindred or affinity. Thirdly, how far in respect of other relations. Fourthly, how far in respect of charity. Fifthly, how far in respect of the profession of the law.

Sect.

Sect. 12. As to the first of these particulars, *viz.* How fa
some acts of this kind are justifiable in respect of an interest in th
thing in variance, it seemeth to be clearly agreed, that if (a)
tenant in tail, or for life, be impleaded, he in remainder or re
version may lawfully maintain the defence of the suit with h
own money: And upon the like ground it seems to be clear, th
if in an action of trespass, &c. brought by or against a (b) lessee fo
years, the inheritance come into question, the lessor may lawfull
maintain his lessee, and give (c) evidence to prove the inheritanc
in himself; for though the judgment which may be given again
the lessee cannot directly bind his inheritance, yet the verdict ma
be a prejudice to his title, being given on a supposal of his n
having a good one: also it hath been admitted as clear law, tha
if one seised in fee of certain land, bring an action of trespa
quare clausum fregit, and then alien the land, and afterwards i
the trial of the cause it be questioned whether the inheritance a
the time of the supposed trespass belonged to the plaintiff or de
fendant, the alinee may lawfully produce evidence to prove tha
the inheritance was in the plaintiff, because the plaintiff's title i
now become his own.

(a) 19 E. 4. 3.
9 H. 6. 64.
B. Main. 3, 53.
2 R. Abr. 117.
(b) 6 E. 4. 2.
2 R. Abr. 117.
B. Main. 33.
39 H. 6. 20.
Main 28.
(c) 14 H. 6. 7.
B. Main 23.
2 R. Abr. 117.

Sect. 13. Also it hath been said, that not only those wh
have a certain interest, but also that those who have a bare con
tingency of such an interest in the lands in question, which pos
sibly may never come *in esse*, may in like manner lawfull
maintain another in an action concerning such lands; from
whence it follows, That if I grant to *B.* that if my lessee for lif
shall die during my life, that then he shall have the land for te
years, and after my lessee be impleaded, *B.* may maintain him.

9 H. 6. 4.
3 R. Abr. 127.

Sect. 14. And it hath been said, That not only those wh
have a contingency of such an interest, which it is in no man'
power to bar them of, if the contingency happen, may justify
such maintenance, but that those also shall have the same privi
lege, who by the act of God have the immediate possibility o
such an interest, though it be in the power of another to deprive
them of it; and therefore that an heir apparent, or the husband
of such heir, may lawfully maintain the ancestor in an action
concerning the inheritance of the land whereof he is seised in
fee.

14 H. 7. 2.
19 Ed. 4. 3.
21 H. 6. 16.
2 Inst. 564.
2 R. A. 115.

Sect. 15. But it is said, That the grantee of a reversion,
before the late statute for amendment of the law which made
all attornment needless, could not maintain the tenant of the
land without attornment, because his possibility was wholly
created by the act of the party, and could not be executed
but by the voluntary attornment of the tenant, which there
was

9 H. 6. 64.
2 R. Abr. 117.
34 H. 6. 30.

was no remedy to compel him to make by the common law; but perhaps the authority of this opinion may be queſtionable, eſpecially if ſuch grant were made for good conſideration: For ſince thoſe who have only an equitable intereſt in lands, may lawfully maintain others in actions relating to thoſe lands, as ſhall more fully be ſhewn in the ſeventeenth ſection; and ſince the grantor in equity ſhall ſtand intruſted for the grantee after the grant, and the tenant may be enforced by a court of equity to attorn to him, I do not ſee any good reaſon why ſuch grantee ſhould be eſteemed ſuch a ſtranger to the land, that he may not lawfully defend an action concerning it, in the event whereof he is ſo nearly concerned.

Sect. 16. But it ſeems clear, that he who is bound to warrant lands, may lawfully maintain the tenant in the defence of his title, becauſe he is bound by the warranty to render other lands to the value of thoſe which ſhall be evicted. 11 H. 6. 41. B. Main. 51. 2 R. Abr. 118.

Sect. 17. Alſo it ſeems to be agreed, that he who hath an equitable intereſt in lands or goods, or even in a choſe in action, may lawfully maintain another in an action relating thereto; and therefore it ſeemeth to be clear, that a man may lawfully maintain (a) thoſe who are infeoffed of lands in truſt for him, in an action concerning thoſe lands, and that if he ſell them to another, the vendee ſhall have the ſame privilege; alſo it hath been (b) reſolved, that where *A.* was bound as a ſurety for *B.* and *B.* thereupon made a deed of gift of certain ſheep to *A.* in order to ſave him harmleſs from the ſaid bond, with an implied truſt that the ſheep ſhould be returned to *B.* if *A.* ſhould not be damnified, and afterwards an action was brought againſt *A.* for the taking of ſheep, *B.* might juſtify the maintaining of him in reſpect of the ſaid truſt: alſo it ſeemeth to be (c) certain, that the aſſignee of a bond, or other choſe in action, being made over to him for good conſideration, in ſatisfaction of a precedent debt, due *bona fide* to him, and not merely in conſideration of the intended maintenance, may either maintain the obligee in an action brought by him for the debt, or commence an original action in his name, for he hath an equitable intereſt in the debt.

(a) 34 H. 6. 30. 15 H. 7. 2. 2 E. 4. 2. B. Main. 19, 30.

(b) Noy 100. Moor 620. See 39 H. 6. 19. 6. 20. F. Main. 14.

(c) 34 H. 6. 30. 15 H. 7. Noy 52. C. Eliz. 552. 1 Sid. 21. B. Main. 9.

Sect. 18. Alſo it ſeemeth to be (d) agreed, that wherever any perſons claim a common intereſt in the ſame thing, as in a way, church yard, or common, *&c.* by the ſame title, they may maintain one another in a ſuit relating to the ſame.

(d) 18 E. 2. 4. B. Main. 41. Hob. 92. 2 R. Abr. 118. Noy 99. Moor 562. 788. 1 Roll. 57.

Sect. 19. It is ſaid, That he who is (e) bail for another, may take care to have his appearance recorded, but that he ought not to intermeddle any farther.

(e) 34 H. 6. 26. 14 H. 6. 6. 18 Ed. 4. 12.

Sect.

Sect. 20. As to the ſecond of the ſaid particulars, *viz.* How far ſome acts of this kind are juſtifiable in reſpect of kindred affinity, it ſeems to be agreed, that whoever is in any way of kindred or affinity to either of the parties, ſo long as the ſame (a) continues, or but related to him by being his (b) godfather may lawfully (c) ſtand by him at the bar, and counſel and aſſiſt him, and alſo pray another to be of counſel to him, but that he cannot juſtify the laying out of any of his own (d) money in the cauſe, unleſs he be either (e) father, or ſon, or hein apparent to the party or the huſband of ſuch an heireſs.

(a) 20 H. 6. 6 Ed. 4. 5. 14 H. 7. 2.
(b) 6 Ed. 4. 5. F. Main. 16.
(c) 21 H. 6. 15. 11 H. 6. 41. 42. 12 H. 6. 2. 19 Ed. 4. 37. 9 H. 6. 64. 9 Ed. 4. 32.
(d) 19 Ed. 4. 5. 2 Inſt. 564.
(e) 21 H. 6. 16. 2 Inſt. 564. Vide ſup. f. 14.

As to the third of the ſaid particulars, *viz.* How far ſome acts of maintenance are juſtifiable in reſpect of other relations I ſhall conſider. 1 How far a lord may maintain his tenant. How far a tenant may maintain his lord. 3. How far a maſter may maintain his ſervant. 4. How far a ſervant may maintain his maſter. 5. How far one neighbour may maintain another.

Sect. 21. As to the firſt point it ſeems certain, that not only the (f) lord, but alſo the *ceſtui que uſe* of a ſeigniory, may come with the tenant to a trial in an aſſize againſt him and ſtand by him and aſſiſt him, and alſo pray the ſheriff to return an indifferent jury: Alſo it ſeemeth, that the (g) lord of a town in an action brought againſt the inhabitants, wherein a right to a common burying place, claimed by them, is brought into queſtion, may maintain them in the defence of their right, by ſhewing authentick evidence thereof to the jury: And in ſome (h) books it is ſaid generally, that the lord may maintain his tenant, without ſaying how far he may do it; and I do not find it any where expreſsly holden, that the lord may juſtify laying out his own money in defence of his tenant's title; but it ſeemeth the better opinion that he may as well juſtify it as any other of the above-mentioned acts of (i) maintenance; for the lord, by accepting a man for his tenant, ſeemeth to take him under his immediate (k) protection, and inaſmuch as the lands were originally derived from the lord, and he hath the continual benefit of the ſervices due from them, the law in many caſes of (l) common right, obliges him to warrant them unto his tenant, and where it doth not oblige him, ſurely it will at leaſt permit him to do it: But it ſeems clear that he cannot maintain him in reſpect of any lands not holden of him.

(f) 11 H. 6. 39. 6 40. 2 R. Abr. 115. B. Main. 50.
(g) 18 Ed. 4. 2. B. Main. 50.
(h) 9 H. 6. 64. B. Main. 3.
(i) Co. Lit. 65.
(k) Co. Lit. 101, 384. 11 H. 6. 42. 2 R. Ab. 117.
(l) F. Main. 52.

Sect. 22. As to the ſecond point, *viz.* How far a tenant may maintain his lord, it is ſaid, that he may juſtify (m) coming with his lord, and ſtanding with him at a trial; but I can-

(m) 11 H. 6. 42. 2 R. Abr. 116.

not

not find any thing more relating to this matter in any of the books.

Sect. 23. As to the third point, *viz.* How far a maſter may maintain his ſervant, it is ſaid, that the maſter may go along with his (a) ſervant, or with his (b) chaplain, being retained to live in his houſe with him, in order to (c) retain counſel, and that he may pray one to be of counſel for him, and alſo that he may go with him to the (d) trial and ſtand with him and aid him while the cauſe is tried, but ought not to ſpeak in the court in favour of his cauſe. Alſo it is ſaid, that if my ſervant be arreſted in an action of (e) debt, I may aſſiſt him with money in order to keep him out of priſon, that I may have the benefit of his ſervice: But it is ſaid that the maſter, in real actions, cannot juſtify laying out money for his ſervant, unleſs he hath ſome of his wages in his hand; which, if the ſervant be willing, the maſter may ſafely lay out on his behalf.

2 R. Abr. 116. Het. 79.

(a) Het. 79.
(b) 19 H. 6. 30.
(c) 28 H. 6. 7. 12. b. 13. 34 H. 6. 25. 26. B. Main. 6, 14. F. Main. 20. Con. F. Main. 13.
(d) 19 H. 6. 30. 11 H. 6. 42. 2 R. Abr. 116. Het. 79.
(e) 21 H. 7. 40. Moor 814. B. Main. 24. 31 H. 6. 9. 19 Ed. 4. 3. B. Main. 44. 52.

Sect. 24. As to the fourth point, *viz.* How far a ſervant may maintain his maſter, it ſeemeth clear, that a perſon generally retained by another as his ſervant to do all manner of ſervices, and not for a (f) particular occaſion only, may juſtify (g) riding about to ſpeed his buſineſs, and going to (h) counſel in his behalf, and ſhewing his evidences to the counſel or to the jury, and (i) ſtanding by him at a trial between him and another; but it is certain, that he cannot lawfully lay out any of his own (k) money to aſſiſt the maſter in his ſuit.

(f) 39 H. 6. 5. 6. Con. Keil. 50.
(g) 19 E. 4. 3.
(h) 19 H. 6. 31.
(i) 11 H. 6. 42.
(k) 3 H. 6. 53. 54. 11 H. 6. 10. 13.

Sect. 25. As to the fifth point, *viz.* How far one neighbour may aſſiſt another, it ſeems clear, that a man may lawfully go with his (l) neighbour to enquire for a perſon learned in law, but that (m) he ought not to give him any money towards carrying on his ſuit.

19 E. 4. 3. 12 Ed. 4. 14.
(l) 19 E. 4. 3. 2 R. Ab. 118.

Sect. 26. As to the fourth inſtance wherein ſome acts of this kind are juſtifiable, *viz.* That relating to charity, it ſeems to be (m) agreed, that any one may lawfully give money to a poor man to enable him to carry on his ſuit. Alſo it hath been adjudged, that any one may ſafely go with a (n) foreigner who cannot ſpeak Engliſh to a counſellor, and inform him of his caſe.

(m) 21 H. 6. 12. 9 H. 6. 64. 22 H. 6. 64. 22 H. 6. 35. B. Main. 14.
(n) 19 E. 4. 3. 34 H. 6. 25. 15 H. 7. 2. B. Main. 7.

As to the fifth inſtance wherein ſome acts of this kind may be juſtified, *viz.* that relating to the profeſſion of the law, I ſhall conſider, Firſt, how far they are juſtifiable in a counſellor. Secondly, how far in an attorney.

Sect.

(a) 1 H. 6. 10. 11. 2 R. Abr. 116. 2 Inſt. 564. (b) F. Main. 8. 22 H. 6. 6.

Sect. 27. As to the firſt point, there is no doubt but that a counſellor, having received his fee, may lawfully ſet forth his client's cauſe to the beſt advantage; but it is certain, that he can no more juſtify (b) giving him money to maintain his ſuit, or threatening a juror, than any other perſon.

(c) 23 H. 4. 16. Keilw. 50. Hob. 117. 2 Inſt. 564. 2 R. Abr. 116. F. Main. 21. (d) 3 Mod. 98. Vide 2 Danv. 487, 12, 13, 14. Winch. 52. 1 Jon. 208. C. Car. 159. 194. Con. C. Eliz. 415, 459, 760. Moor 366. 2 R. Abr. 114, 115. (e) 2 R. Abr. 114.

Sect. 28. As to the ſecond point, there is no doubt but that an attorney may (c) lawfully proſecute or defend an action in the court wherein he is an allowed attorney, in the behalf of any one by whom he ſhall be ſpecially retained, and that he may aſſiſt his client, by laying out his own money for him to be repaid again, and alſo may maintain an action againſt him for the ſame by virtue of ſuch a retainer, without any ſpecial promiſe. And it is ſaid, alſo, that attornies, may juſtify ſuch maintenance in other courts, wherein they are not (d) allowed attornies, but that they cannot have an action for the money ſo laid out without a ſpecial promiſe, and that they are more juſtified by a general (e) retainer to proſecute for another all his cauſes, than if they were not retained at all; and it is certain that they ought not to carry on a cauſe for another at their own expence, with a promiſe never to expect a repayment. And it ſeems juſtly queſtionable whether ſolicitors who are no attornies, can in any caſe juſtify the laying out their money in another's ſuit.

2 R. Abr. 115. Winch. 53. 2 Inſt. 214.

Sect. 29. However it is certain, that no counſellor or attorney can juſtify the uſing any deceitful practice, in maintenance of a client's cauſe, and that they are liable to be ſeverely puniſhed for all miſdemeanors of this kind, not only, by the common law, but alſo by ſtatute; for it is enacted by Weſtminſter 1. c. 29. "That if any ſerjeant, pleader, or other, do any manner of "diſceit or colluſion in the king's court, or conſent unto it, to "diſceit of the court, or to beguile the court or the party, and "thereof be attainted, he ſhall be impriſoned for a year and a "day, and from thenceforth ſhall not be heard to plead in that "court for any man. And if he be no pleader, he ſhall be im- "priſoned in like manner by the ſpace of a year and a day at the "leaſt. And if the treſpaſs require greater puniſhment, it ſhall "be at the king's pleaſure."

11 E. 4. 3. E. Diſc. 28.

Sect. 30. In the conſtruction of this ſtatute the following points have been holden. Firſt, That counſellors, *&c.* who are not ſworn, are as much within the meaning of it as ſerjeants, *&c.* who are ſworn.

2 Inſt. 215, 216 Dyer 249. 2 Inſt. 215. F. N. B. 98.

Sect. 31. Secondly, That all fraud and falſehood, tending to impoſe upon or abuſe the juſtice of the king's courts, are within the purview of it, as in the following inſtances:

Sect.

Sect. 32. First, Where an attorney ſues out an *habere facias ſeiſinam*, falſely reciting a recovery in a real action, where in truth there was no recovery at all, and by colour thereof puts the ſuppoſed tenant in the action out of his freehold.

Sect. 33. Secondly where one brings a *præcipe* againſt a poor man, knowing that he had nothing in the land, on purpoſe to get the poſſeſſion from the true tenant. 2 Inſt. 215.

Sect. 34. Thirdly, where one procures an attorney to appear for a man, and confeſs judgment without any warrant. 41 E. 3. 1. 2 Inſt. 213.

Sect. 35. Fourthly, where one pleads a falſe plea, known to be utterly groundleſs, and invented merely with a deſign to delay juſtice, and abuſe the court; and therefore it is ſaid, that if a client deſire his attorney to plead ſuch a plea, the attorney ought to enter upon the roll, *non fuit veraciter informatus, ideo nihil dicit.* Dyer 362. 10. E. 4. 9.

Sect. 36. As to the third general point of this chapter. How far offences of this kind are reſtrained by the common law? It ſeemeth, that all maintenance is ſtrictly prohibited by the common law, as having a manifeſt tendency to oppreſſion, by encouraging and aſſiſting perſons to perſiſt in ſuits, which perhaps they would not venture to go on in upon their own bottoms; and therefore it is ſaid, that all offenders of this kind are not only liable to an (a) action of maintenance at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff, but alſo that they may be (b) indicted as offenders againſt public juſtice, and adjudged thereupon to ſuch fine and impriſonment, as ſhall be agreeable to the circumſtances of the offence. Alſo it ſeemeth, that a court of record may commit a man for an (c) act of maintenance done in the face of the court. 2 Inſt. 208, 212.

(a) 11 H. 6. 11. 2 Inſt. 208. 2 R. Abr. 114. 8 H. 5. 8.

(b) 2 R. Abr. 114. 2 Inſt. 208, 212.

(c) Het. 79.

Sect. 37. As to the fourth general point of this chapter. How far offences of this kind are puniſhed by the ſtatute? It is enacted by 1 Edw. 3. c. 14. which was farther enforced by 20 Edw. 3. c. 4. "That none of the King's miniſters, nor no great man of the realm, by himſelf nor by other, by ſending of letters, nor otherwiſe, nor none other great nor ſmall, ſhall take upon them to maintain quarrels nor parts in the country, to the let and diſturbance of the common law."

Sect. 38. And it is farther enacted by 1 Rich 2. c. 4. "That none of the King's counſellors, officers or ſervants, nor any other perſon within the realm of *England*, of whatſoever eſtate or condition they be, ſhall take or ſuſtain any quarrel by maintenance, in the country or elſewhere upon grievous pain, that is to ſay, the ſaid counſellors and the king's great officers,

" upon a pain which ſhall be ordained by the king himſelf, by
" advice of the lords of his realm; and other leſs officers
" ſervants of the king's as well in the exchequer, and all his o
" courts and places, as of his own meiny, upon pain to loſe t
" offices and ſervices, and to be impriſoned, and then to be
" fomed at the king's will, every of them according to their
" gree, eſtate, and deſert: and all other perſons through
" realm, upon pain of impriſonment, and to be ranſomed
" aforeſaid."

F. Main 24. *Sect.* 39. In the conſtruction of theſe ſtatutes the follow points have been holden: firſt, that maintenance of a ſuit court baron is as much within the purview thereof as maintena in a court of record.

3 H. 6. 53. 54. B. Main. 1. F. Main. 18. *Sect.* 40. Secondly, that *nul tiel record* is a good plea to an tion of maintenance brought on theſe ſtatutes; and theref that he who barely aſſiſts another in taking out an original, wh never is returned, is not liable to any ſuch action.

Fitz. Maintenance 17, 26. *Sect.* 41. Thirdly, that it is not material, whether the pl tiff in an action on the ſaid ſtatutes were nonſuited, or recove in the action wherein the maintenance is ſuppoſed.

Sect. 42. Alſo it is certain, that he who fears that another maintain his adverſary, may by way of prevention have an o ginal writ grounded on the ſaid ſtatute prohibiting him ſo to

Reg. 182. b.

Sect. 43. Alſo all perſons are prohibited to give or rece any liveries or badges for maintenance, under ſevere penal

12 Mod. 322. by 1 Rich. 2. c. 7. 7 Hen. 4. c. 14. 13 Hen. 4. c. 3. 8 Hen c. 4. and 8 Edw. 4. c. 2.

Sect. 44. And it is further enacted by 32 Hen. 8. c
" That no perſon whatſoever ſhall unlawfully maintain,
" cauſe or procure any unlawful maintenance in any acti
" demand, ſuit or complaint in any of the king's courts of
" chancery, *Whitehall*, or elſewhere, where any perſon ſhall h
" authority by virtue of the king's commiſſion, patent or w
" to hold plea of lands, or to examine, hear or determine
" title of lands, or any matter of witneſſes, concerning the ti
" right, or intereſt of any lands, tenements, or hereditaments;
" alſo that no perſon whatſoever do unlawfully retain, for main
" nance of any ſuit or plea, any perſon or perſons, or embrace
" freeholders, or jurors, or ſuborn any witneſs by letters, rewa
" promiſes, or any other ſiniſter labour or means, for to maint
" any matter or cauſe, or to the diſturbance or hindrance of
" t

vice, or to the procurement, by occasion of any manner of perjury by false verdict or otherwise, in any manner of courts aforesaid, upon pain to forfeit for every such offence ten pounds; the one one moiety thereof unto the king, and the other moiety to him that will sue for the same by action of debt, &c.

Sect. 45. It seemeth that in an information on this statute it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. Savil 41, 42.

Sect. 46. Also it is said to have been adjudged, That maintenance of a suit in a spiritual court, is neither within this nor any of the other abovementioned statutes concerning maintenance. Noy 68. C. Eliz. 594.

Sect. 47. Also it hath been holden, that in an information on this statute, it is necessary to shew that a plea was depending, and therefore that it is not sufficient to say that a bill was exhibited. Savil 41, 42.

CHAPTER THE EIGHTY-FOURTH.

OF CHAMPERTY.

AND now we are come to the second species of maintenance, called champerty, which is the unlawful maintenance of a suit in consideration of some bargain to have part of the thing in dispute, or some profit out of it. 2 Inst. 208. Co. Lit. 368.

Sect. 2. Having shewn in the precedent chapter what shall amount to an act of maintenance, and how far all maintenance in general, and consequently champerty, is punishable by the common law; I shall only take notice in this place, how far this offence in particular is restrained by statute, and to that end shall set down in order the several statutes relating to it, and shew in what manner they have been expounded.

Sect. 3. And first, it is enacted by the statute of Westminster 1. c. 25. "That no officers of the king by themselves nor by other, shall maintain pleas, suits, or matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof by covenant made between them: and he that doth, shall be punished at the king's pleasure." 3 Edw. 1st.

2 Inſt. 208. *Sect.* 4. In the conſtruction of the ſtatute theſe following o
nions have been holden. Firſt, that by the king's courts, th
in mentioned, are intended only his courts of record.

F. N. B. 172. 2 Inſt. 209. 563. *Sect.* 5. Secondly, that under the word "covenant," whic
a ſtrict ſenſe ſignifieth only an agreement by deed, all kind
promiſes and contracts of this kind are included, whether t
be made by writing or parol.

47 Aſſize 5. 47 Ed. 3. 9. *Sect.* 6. Thirdly, that maintenance in perſonal actions to h
part of the debt or damages, is as much within this ſtatute
maintenance in real actions for a part of the land.

F. N. B. 172. 2 Inſt. 209. 47 Ed. 3. 9. 47 Aſſ. 5. 9 H. 7. 18. F. Champ. 4. *Sect.* 7. Fourthly, that maintenance in conſideration o
rent granted out of land in variance, is within this ſtatute,
that rent granted out of other lands is no way within the
view of it.

B. Champ. 2. *Sect.* 8. Fifthly, That it hath been holden not to be mate
whether he who brings a writ of champerty, did in truth ſu
any damage by it, or whether the plea wherein it is alledge
determined or not.

(a) 21 E. 3. 52. 30. Ed. 3. 3. 4. 2 R. Abr. 113. 31. *Sect.* 9. Sixthly, That the (a) maintenance of the tenan
defendant is as much within the meaning of the ſtatute, as
maintenance of a demandant or plaintiff.

(b) 1 H. 7. 2. B. Champ. 6. *Sect.* 10. Seventhly, that (b) ſuch grants only of part of
thing in ſuit, which are made merely in conſideration of the m
tenance are within the meaning of the ſtatute, and not ſuc
are made in conſideration of a precedent honeſt debt, which
agreed to be ſatisfied with the thing in demand when recove

Sect. 11. And it is farther enacted by the ſtatute of W
minſter 2. c. 49. "That the chancellor, treaſurer, juſtices,
"any of the king's counſel, no clerk of the chancery, nor of
"exchequer, nor any juſtice or other officer, nor any of the ki
"houſe, clerk, nor lay, ſhall not receive any church, nor
"vowſon of a church, land nor tenement in fee, by gift o
"purchaſe, or to farm, nor by champerty, nor otherwiſe,
"long as the thing is in plea before the king, or before any of
"officers, nor ſhall take no reward thereof. And that he
"doth contrary to this act, either himſelf, or by another, or m
"any bargain, ſhall be puniſhed at the king's pleaſure, as
"he that purchaſeth, as he that doth ſell."

Sect. 12. In the conſtruction of this ſtatute the following opinions have been holden. Firſt, that it extendeth only to the officers therein named, and not to any other perſons. 2 Inſt. 484, 485.

Sect. 13. Secondly, that it ſo ſtrictly reſtrains all ſuch officers from purchaſing any land, hanging a plea, that they cannot be excuſed by a conſideration of (a) kindred or affinity, and that though they are within the meaning of the ſtatute, by barely making ſuch a purchaſe, whether (b) they maintain the party in his ſuit or not; (c) whereas ſuch a purchaſe for good conſideration, made by any other perſon, of any ter-tenant, is no offence, unleſs it appear that he did it to maintain the party.

(a) 2 Inſt. 485.
(b) 2 Inſt. 484. 50 Aſſ. 3. B. Champ. 8. F. Champ. 6.
(c) 22 E. 3. 10. b. 52. 2 Inſt. 484. F. N. B. 172. D. E.

Sect. 14. And it is farther enacted by 28 Edw. c. 11. in the following words, "becauſe the king hath heretofore ordained by ſtatute, That none of his miniſters ſhall take no plea for maintenance, by which ſtatute other officers were not bounden before this time, the king will that no officer, nor any other, (for to have part of the thing in plea) ſhall not take upon him the buſineſs that is in ſuit; nor none upon any ſuch covenant ſhall give up his right to another; and if any do and be attainted thereof, the taker ſhall forfeit unto the king ſo much of his land and goods, as doth amount to the value of the part that he hath purchaſed for ſuch maintenance. And to obtain this, whoſoever will, ſhall be received to ſue for the king before the juſtices before whom the plea hangeth, and the judgment ſhall be given by them. But it may not be underſtood hereby, that any perſon ſhall be prohibited to have counſel of pleaders, or of learned men in law, for his fee, or of his parents and next friends."

See alſo 33 Ed. 1. ſt. 3. 1. Rich. 2. c. 6. 1 Inſt. 369.

Sect. 15. In the conſtruction of this ſtatute the following points have been holden, Firſt, that a (d) conveyance executed, hanging a plea in purſuance of a bargain made before, is not within the meaning of it.

(d) 30 Aſſ. 15. 8 Ed. 4. 13. 2 Inſt. 563. F. Champ. 13. F. N. B. 172.

Sect. 16. Secondly, That champerty in any action at (e) common law, whether it be real, perſonal, or mixt, is within this ſtatute: Alſo it ſeems the better opinion, that the purchaſe of land while a ſuit of (f) equity concerning it is depending, is within the purview of it.

(e) 47 Ed. 39. 47 Aſſize 5. 2 Inſt. 563.
(f) Moor 655. Con. 2. R. Abr. 113.

Sect. 17. Thirdly, that a (g) leaſe for life, or years, or a voluntary gift of land, hanging a plea, is as much within the ſtatute as a purchaſe for money.

(g) 8 E. 4. 13. B. Champ. 10. F. N. B. 172.

Sect. 18. Fourthly, that a ſurrender made by a (h) leſſee to his leſſor is not within the meaning of this ſtatute; for ſince the leſſor may lawfully maintain his leſſee without ſuch a ſur-

(h) F. N. B. 172. 2 Inſt. 564.

render, as hath been more fully ſhewn in the precedent chapt
ſurely *a fortiori* he may do it after the ſurrender.

(a) 2 Inſt. 564. F. N. B. 172.

Sect. 19. Fifthly, that no (a) conveyance, or promiſe ther
of, relating to lands in ſuit, made by a father to his ſon, or
any anceſtor to his heir apparent, is within the ſtatute, ſince
only gives them the greater encouragement to do what by natu
they are bound to do.

(b) 13 H. 7. 17. B. Champ. 3.

Sect. 20. That the (b) giving of part of the land, in ſu
after the end of it, to a counſellor for his wages, is not with
the meaning of it, if it evidently appears, that there was no ki
of precedent bargain relating to ſuch gift; but it ſeems (c) da

(c) 2 Inſt. 564.

gerous to meddle with any ſuch gift, ſince it cannot but car
with it a ſtrong preſumption of champerty.

† *Sect.* 21. And it is enacted by 31 Eliz. c. 5. "that the offen
"of champerty may be laid in any county at the pleaſure of t
"informer."

Vide 2 b. p. 382.

CHAPTER THE EIGHTY-FIFT

OF EMBRACERY.

FOR the better underſtanding of the nature of embracer
I ſhall conſider firſt, What kind of maintenance comes u
der the notion of embracery. Secondly, What acts of this n
ture are altogether unlawful. Thirdly, In what circumſtanc
ſome kinds of them may be lawful. Fourthly, How far t
offence is reſtrained by the common law. Fifthly, How far
ſtatute.

(a) F. N. B. Co. Lit. 369. Moor 815. 4 Comm. 149. (b) 21 H. 6. 20. 22 H. 6. 5. 37 H. 6. 31. 8 Dec. Rep. 20 a. 11, 13. Co. Lit. 369. Moor 815.

Sect. 1. As to the firſt point it ſeems clear, that (a) any
tempt whatſoever to corrupt, or influence, or inſtruct a ju
or any way to incline them to be more favourable to the one ſi
than to the other by money, promiſes, letters, threats, or pe
ſuaſions, except only by the ſtrength of the evidence and the a
guments of the counſel in open court, at the trial of the cau
is a proper act of embracery, (b) whether the jurors on wh
ſuch attempt is made give any verdict or not, or whether t
verdict given be true or falſe.

(c) 13 H. 4. 16 Moore 806. C. Eliz. 816. Co. Lit. 159. 369.

Sect. 2. [c] And the law ſo far abhors all corruption of t
kind that it prohibits every thing which has the leaſt tenden
to it, what ſpecious pretence ſoever it may be covered wi
a

and therefore it will not ſuffer a mere ſtranger, ſo much as to labour a juror to appear and act according to his conſcience.

Sect. 3. Alſo it is ſaid, that generally the giving of money to a juror (a) after the verdict, without any precedent contract in relation to it, is an offence ſavouring of the nature of embracery; becauſe if ſuch practices were allowable, it would be eaſy to evade the law, by giving jurors ſecret intimations of ſuch an intended reward for their ſervice, which might be of as bad conſequence as the giving of money before-hand. But it ſeems clear, that the giving of jurors ſuch a reaſonable recompence, as is uſually allowed them for their expences in travelling, &c. and which may fairly be expected by them from either ſide that ſhall prevail, is no way criminal, becauſe if no ſuch allowance were to be expected, it would be often difficult to prevail with perſons to ſerve on a jury at their own charge; and therefore by experience it hath been found neceſſary to permit the parties to give jurors ſome amends for their charges.

(a) 39 Aſſ. 19. B. Dec. Tan. 14.

Sect. 4. It hath been adjudged, that the bare (b) giving of money to another to be diſtributed among jurors, is an offence of the nature of embracery, whether any of it be afterwards actually ſo diſtributed or not; alſo it is (c) clear, that it is as criminal in a juror, as in any other perſon, to endeavour to prevail with his companions to give a verdict for one ſide by any practices whatſoever, except only by arguments from the evidence which was produced, and exhortations from the general obligations of conſcience to give a true verdict. And there can be no doubt but that all fraudulent contrivances whatſoever to ſecure a verdict, are high offences of this nature; as where perſons by (d) indirect means procure themſelves or others, to be ſworn on a *Tales* in order to ſerve one ſide.

(b) 22 H. 6, 5. 28 H. 6, 7, 12. 31 H. 6, 8, 9. B. Main. 6, 14.

(c) 17 Ed. 4, 5. 18 Ed. 4. 4. B. Main. 32, 39.

(d) 1 Saund. 301.

Sect. 5. As to the ſecond point, *viz.* What acts of this kind are altogether unlawful. It ſeems clear, that neither the party himſelf, nor his counſel, nor attorney, nor any perſon whatſoever, can juſtify any indirect practices of influencing a jury, either by giving (e) or promiſing them money, or (f) menacing them, or (g) inſtructing them in the cauſe beforehand, *&c.*

(e) 13 H. 4, 16. 17. 11 H. 6, 11. 2 R. Abr. 116. 6, 3.

[f] 19 H. 6, 31. 13 H. 4, 17.

[g] 2 Bulſt. 25. Noy 102. Co. Lit. 362. Moor 815.

Sect. 6. As to the third point, *viz.* In what circumſtances ſome acts of this nature may be lawful. It ſeemeth clear, that any perſon who may juſtify any other act of maintenance, may ſafely labour a juror to (h) appear and give a verdict according to his conſcience, but that no other perſon can juſtify inter-

[h] Dyer 48. Co. Lit. 157. 369. Moore 813. Noy 102.

intermeddling ſo far, and that no one whatſoever can juſtify
(a) Hob. 294. labouring a juror (a) not to appear.

Sect. 7. As to the fourth point, *viz.* How far offences of
kind are reſtrained by the common law, there can be no do
but that they ſubject the offender either to an indictment or
tion, in the ſame manner as all other kinds of unlawful mai
nance do by the common law. Alſo it ſeemeth, that if an a
embracery were not known before the trial of a cauſe, ſo
the party to whoſe prejudice it was intended, had no opportu
to prevent the ill effects of it, by challenging the juror who
practiſed upon, it will be a good ground to move the cour
ſet aſide the verdict.

Sect. 8. As to the fifth point, *viz.* How far offences of
kind are reſtrained by ſtatute. It is enacted by 5 Edw. 3. c.
" that if any juror, in aſſizes, juries or inqueſts, take of the
" party or of the other, and be thereof duly attainted, t
" hereafter he ſhall not be put in any aſſizes, juries or inque
" and nevertheleſs he ſhall be commanded to priſon, and furt
" ranſomed at the king's will. And the juſtices before whom ſ
" aſſizes, juries, and inqueſts ſhall paſs, ſhall have power to
" quire and determine according to this ſtatute."

Sect. 9. And it is farther enacted by 34 Edw. 3. c. 8. "T
" in every plea, whereof the inqueſt or aſſize doth paſs, if
" of the parties will ſue againſt any of the jurors, that they h
" taken of his adverſary or of him, for to give their verdict,
" ſhall be heard, and ſhall have his plaint by bill preſently
" fore the juſtices, before whom they did ſwear, and that
" juror be put to anſwer without any delay; and if they pl
" to the country, the inqueſt ſhall be taken maintenant. A
" if any man other than the party will ſue for the king aga
" the juror, it ſhall be heard and determined as afore is ſa
" And if the juror be attainted at the ſuit of other than the pa
" and maketh fine, the party that ſueth ſhall have half the fi
" and that the parties to the plea, ſhall recover their dama
" by the aſſeſſment of the inqueſt. And that the juror ſo
" tainted have the priſon of one year, which impriſonment
" king granteth, that it ſhall not be pardoned for any fine;
" if the party will ſue by writ, before other juſtices, he ſh
" have the ſuit in the form aforeſaid."

Sect. 10. And it is further enacted by 38 Edw. 3. c.
" That if any jurors in aſſizes ſworn, and other inqueſts
" be taken between the king and party, or party and pa
" do any thing take by them or other, of the party, plain
"

" or defendant, to give their verdict, and thereof be attainted " by proceſs contained in the ſaid ſtatute of 34 Edw. 3. be it at " the ſuit of the party that will ſue for himſelf, or for the king, " or any other perſon, every of the ſaid jurors ſhall pay ten " times as much as he hath taken. And that he that will ſue " ſhall have the one half, and the king the other half. And that " all the embraceors to bring or procure ſuch inqueſt in the " country to take gain or profit ſhall be puniſhed in the ſame " manner and form as the jurors. And if the juror or em- " braceor ſo attainted, have not whereof to make gree in the " manner aforeſaid, he ſhall have the impriſonment of one " year: and the intent of the king, of great men, and of the " commons is, that no juſtice nor other miniſter ſhall enquire of " office, upon any of the points of this article, but only at the " ſuit of the party, or of other, as afore is ſaid." See alſo the 32 Hen. 8. c. 9. ſec. 3. 6. Infra 554.

Sect. 11. In the conſtruction of theſe ſtatutes the following points have been holden: Firſt, That all actions of *decies tantum* being founded on an offence ſuppoſed to have been committed in ſome former action appearing upon record, it will be a good plea in bar, either that there is no (a) ſuch record at all, or that there is not any ſuch (b) record by which it may appear that the juror was ſworn, and that it is a good (c) exception in abatement of the writ, that there is a variance in the firſt record from that in the declaration in the preſent action; yet it is ſaid, that it is not neceſſary to (d) ſhew the whole record in certain, but only ſo much of it as conveys the plaintiff to his action.

(a) 5 Edw. 4. 3. B. Dec. Tant. 2, 11.
(b) 37 H. 6, 31. B. Dec. Tant. 13
(c) 9 H. 6, 1. B. Dec. Tant. 12
(d) 34 H. 6, 4.

Sect. 12. Secondly, That it is not (e) ſufficient to ſhew that the defendants took money in order to embrace a jury, without ſhewing alſo that they actually diſpoſed of it accordingly.

(e) 37 H. 6, 31. F. N. B. 171.

Sect. 13. Thirdly, that the (f) plaintiff muſt ſhew in certain how much was received, or otherwiſe the court will not know for what ſum to give judgment.

(f) Pl. Com. 85.

Sect. 14. Fourthly, That the giving of money to a juror (g) after the verdict is not within the ſtatute, unleſs there were ſome precedent contract relating to it.

(g) 39 Aſſ. 19. B. Dec. Tant. 14.

Sect. 15. Fifthly, That it is not (h) material whether the jurors gave any verdict or not, or if they did give one, whether it were true or falſe.

(h) 21 H. 6, 31. 37 H. 6, 31. B. Dec. Tant. 10 13 F. N. B. 171. Co. Lit. 369. Dyer 95.

Sect.

40 Ed. 3. 3.
36 H. 6, 28.
B. Dec. Tant 3, 4.
F. N. B. 171.
Finch 255.
21 H. 6, 20.

Sect. 16. Sixthly, That all the jurors and embraceors may be joined in one action, notwithſtanding they ſeverally receive different ſums, becauſe all was received in order to give the ſame verdict, which could not but be the entire act of all the jurors. But it ſeems, that each defendant ought to plead ſeverally, that he did not take money in the manner as the plaintiff hath declared.

[a] B. Dec. Tant 7.
38 Savil. 42.

Sect. 17. Seventhly, That the (a) defendants ought not to plead generally not guilty, but that they ought ſpecially to deny the taking of the money, *&c.*

[b] 41 E. 3, 15.
44 E. 3, 36.
B. Dec. Tant 5, 7.

Sect. 18. Eighthly, That the plaintiff ſhall be paid the moiety of the money due to him on a judgment in *decies tantum* before the king, becauſe the king's moiety is not due as a debt but as a fine; and wherever the king is intitled to a fine from the ſuit of a ſubject, the plaintiff ſhall firſt be ſatisfied.

[c] 7 H. 4, 2, 3.
43 E. 3, 16.
B. Dec. Tant. 9, 19.

Sect. 19. Ninthly, That the huſband (c) alone may bring *decies tantum*, for an embracery in a former action brought by him and his wife, becauſe by a *decies tantum* money only is to be recovered wherein the wife can claim no ſhare.

[d] 41 Ed. 3, 9.
B. Dec. Tant. 4.
2 R. Abr. 579.

Sect. 20. Tenthly, That he who buys land to maintain a ſuit at a lower price than it is known to be worth, is as much within the ſtatute, for ſo much as the (d) land is worth more than he gave, as if he had received it in money.

[e] 5 E. 4, 2.
3, v. 2. c. 26, 64.
B. Dec. Tant. 15.
C. Eliz. 538, 583.
11 Co. 65.
3 Inſt. 194.
[f] 44. c. 3, 36.
B. Dec Tant 7.

Sect. 21. Eleventhly, That this being a popular action may be barred by the (e) king's releaſe, being made before any action brought, but that it cannot be barred by the releaſe of the party grieved; and from the ſame ground alſo it follows, that the party grieved need not in ſuch action declare of any damages done to him by the embracery; but if he do, it is ſaid that he (f) ought to lay them ſeverally againſt each defendant, or elſe that his writ ſhall abate, unleſs he will releaſe them: but perhaps there may be good reaſon to queſtion this opinion, for why may not the damages be as well recovered, as the action jointly laid againſt all the defendants.

[g] 44 E. 3, 12.
47 E. 3, 4.
B. Dec. 6, 8.

Sect. 22. Twelfthly, That no (g) proceſs of outlawry lies in this action, but only a *capias* or diſtreſs infinite, upon a *nihil* returned, and that ſuch diſtreſs ought to be of the lands which the defendants had at the time of the writ of *decies tantum* purchaſed, and not of thoſe which they had at the time of

[h] 47 E. 3, 4.

the inqueſt; and that no *capias* (h) into a foreign county lies againſt the jurors, becauſe it ſhall be preſumed that they are in the county wherein they were returned on the jury; but clearly this reaſon can no way be extended to the embraceors; and perhaps it may be overfavourable to carry it ſo far in relation

ſhewn to the jurors, eſpecially ſince the diſtreſs infinite can only affect the lands which they had at the time of the *deties tantum*, before which they may poſſibly have ſold thoſe which they had at the return of the *venire*; and why ſhould not the ſheriff's preſent return that the defendants have nothing in the county, overballance the preſumption chiefly grounded on the former return, with which the preſent is not inconſiſtent, being made at a ſubſequent time. Vide 6 E. 4. 11. a. 2 R. Abr. 277.

CHAPTER THE EIGHTY-SIXTH.

Of the OFFENCE of BUYING or SELLING a PRETENDED TITLE.

FOR the better underſtanding the offence of buying or ſelling a pretended title, I ſhall conſider: how it is reſtrained by common law. And, how by ſtatute.

Sect. 1. As to the firſt point, It ſeemeth to be a high offence at common law, to buy, or ſell, any doubtful title to lands known to be diſputed, to the intent that the buyer may carry on the ſuit, which the ſeller doth not think it worth his while to do, and on that conſideration ſells his pretenſions at an under-rate. And it ſeemeth not to be material whether the title ſo ſold be a good or bad one, or whether the ſeller were in poſſeſſion or not, unleſs his poſſeſſion were lawful and uncontеſted. For all practices of this kind are by all means to be diſcountenanced, as manifeſtly tending to oppreſſion, by giving opportunities to great men to purchaſe the diſputed titles of others, to the great grievance of the adverſe parties, who may often be unable or diſcouraged to defend their titles againſt ſuch powerful perſons, which perhaps they might ſafely enough maintain againſt their proper adverſary. Moor 751. Hobart 115. Plowden 80, 88.

Sect. 2. As to the ſecond point, *viz.* How far offences of this kind are reſtrained by ſtatute. It is recited by 1 Rich. 2. c. 9. "That many perſons having true title to lands, and alſo in perſonal actions were wrongfully delayed of their rights and actions, by means that the defendants did commonly make gifts and feoffments of their lands in debate, and of their goods, to lords, and other great men, againſt whom the ſaid purſuants for menace that was made to them, neither could nor durſt make their purſuits: and alſo that many perſons often times uſed to diſſeiſe others, and anon after ſuch diſſeiſin to make divers feoffments,

offments, ſometimes to lords and other great men to have maintenance, and ſometimes to perſons unknown, to the intent to delay the ſaid diſſeiſees, &c. And it is thereupon enacted "that from thenceforth no gift, or feoffment, of lands, tenements, or goods, be made, by ſuch fraud or maintenance; and that if any be in ſuch wiſe made, they ſhall be holden for none and of no value; and that the ſaid diſſeiſees ſhall from thenceforth have their recovery againſt the firſt diſſeiſor as well of the lands and tenements, as of their double damages, without having regard to ſuch alienations, ſo that the diſſeiſees commence their ſuits within the year next after the diſſeiſin done."

F. Feoffments DE TERRES, 1, 19. Co. Lit. 369.

Sect. 3. In the conſtruction of the ſtatute it hath been holden: that feoffments of this kind are only void in reſpect of the diſſeiſees, but that they are effectual between the feoffor and feoffee, &c.

† And it is enacted by ſtat. 13 Ed. 1. c. 49. "that no perſon of the king's houſe ſhall buy any title whilſt the thing is in diſpute; on pain of both the buyer and ſeller being puniſhed at the king's pleaſure."

Sect. 4. And it is farther enacted by 32 H. 8. c. 9. "that no perſon or perſons whatſoever ſhall bargain, buy, or ſell, or by any ways or means, obtain, get, or have any pretended rights or titles, or take, promiſe, grant, or covenant to have any right or title, of any perſon or perſons, in, or to any manors, lands, tenements, or hereditaments, but if ſuch perſon or perſons, which ſhall ſo bargain, ſell, give, grant, covenant or promiſe the ſame, their anceſtors, or they by whom he or they claim the ſame, have been in poſſeſſion of the ſame, or of the reverſion or remainder thereof, or taken the rents or profits thereof, by the ſpace of one whole year next before the ſaid bargain, covenant, grant, or promiſe made; upon pain that he that ſhall make any ſuch bargain, ſale, promiſe, covenant, or grant, to forfeit the whole value of the lands, tenements or hereditaments ſo bargained, ſold, promiſed, covenanted, or granted, contrary to the form of this act. And the buyer or taker thereof, knowing the ſame, to forfeit alſo the value of the ſaid lands, tenements, or hereditaments ſo by him bought, or taken as is aboveſaid. The one half of the ſaid forfeitures to be to the king, and the other half to the party that will ſue for the ſame in any of the king's courts of record, by action of debt, bill, plaint, or information. In which action, bill, plaint, or information, no eſſoin, protection, wager of law, nor injunction ſhall be allowed."

Ld. Raym. 537.

Sect.

Sect. 5. But it is provided by the ſaid ſtatute, "that it ſhall "be lawful to any perſon, being in lawful poſſeſſion, by taking "of the yearly farm, rents, or profits, of, or for any manors, "lands, tenements, or hereditaments, to buy, obtain, get, or "have by any reaſonable way or means, the pretended right or "title of any other perſon or perſons, hereafter to be made to, "of, or in ſuch manors, lands, tenements, or hereditaments, "whereof he or they ſhall ſo be in lawful poſſeſſion, any thing "in the ſaid act contained to the contrary notwithſtanding."

Sect. 6. And it is farther provided, "that the ſaid ſtatute "ſhall not extend to charge any perſon with any of the above-"mentioned penalties, except ſuch perſon be ſued for the of-"fence within one year."

In the conſtruction of this ſtatute the following opinions have been holden:

Sect. 7. I. That it is not material whether any ſuit be depending concerning the lands contracted for, or not, whereas the ſtatutes ſet forth in the precedent chapters extended only to contracts concerning lands which were actually in ſuit. Plowd. 83.

Sect. 8. II. That in an action on this ſtatute, the plaintiff needs not recite it, becauſe the judges are bound *ex officio* to take notice of it, being of a public nature; but that if he do recite it, he muſt, at his peril, take care to recite it certainly, becauſe it is the ground of his action; and the court will not aid him by intending that there is another ſtatute to maintain his action, different from that whereon he himſelf hath founded it. Lit. Rep. 369. B. 2. c. 25. l. 101. Plowd. 84. C. Car. 233. Dyer 74. Con. 1 And. 76.

Sect. 9. III. That in ſuch an action againſt the buyer of a pretended title, it ought expreſsly to appear, that the defendant did know that the ſeller had not been in poſſeſſion the year before; and *vice verſâ*, that in ſuch an action by the buyer the contrary ought to appear, for otherwiſe it may be intended, that he was *particeps criminis*, and therefore ought not to have any ſhare of the penalty. 1 Leon. 167. 1 Burr. 300.

Sect. 10. IV. That it is not ſufficient to ſhew, that the ſeller had not been in poſſeſſion, *&c.* a year before, without expreſsly averring that he had a pretended right or title, becauſe that is the point of the action. Lit. Rep. 365. Dyer 74. Plowd. 80, 88. C. Car. 233.

Sect. 11. V. That it is not (a) ſufficient to ſet forth the value of the land at the time of the conveyance executed, without ſhewing the value at the time of the bargain, becauſe the forfeiture is governed by the latter. (a) C. Car. 233.

Sect.

(a) 4 Co. 26. Co. Lit. 369. Moor 655. Plowd. 80, 88. Dy. 74, 374. (b) Co. Lit. 369. Con. Mo. 266. Dyer 374. (c) Co. Lit. 369.

Sect. 12. VI. That a contract for (a) cuſtomary right copyhold eſtate, or for a leaſe for (b) years, is as much wi the ſtatute as a contract for the fee ſimple; for the words of ſtatute are, *any right or title*, and ſuch contracts are as m within the miſchief intended to be redreſſed by the ſtatute as others can be: but it is (c) ſaid, that a leaſe for years made w an intent to try the title in ejectment, is not within the me ing of the ſtatute, becauſe it is in a kind of courſe of law, un it be made to a powerful man to ſway the cauſe.

Plowd. 81, 85. Dyer 74.

Sect. 13. VII. That in an action for the making ſuch leaſe for years, it is not neceſſary preciſely to ſet forth the co mencement and end of it, becauſe the plaintiff is ſuppoſed to a ſtranger to it.

1 Leon. 166. 1 And. 76, 77.

Sect. 14. VIII. That a leaſe for years by one out of p ſeſſion being made off the land, is as much within the ſtatute if it had been made upon the land, though it be wholly void law; for it is a leaſe in reputation, and taken for ſuch amo the vulgar, and tends as much to diſquier the poſſeſſion as if it h been effectual in law.

B. Main. 38. Plowd. 88, 89. Co. Lit. 369.

Sect. 15. IX. That no conveyance made by one, who ha the uncontеſted poſſeſſion, and undiſputed abſolute propriety lands, is any way within the meaning of the ſtatute, becauſe no way favours of maintenance, and can be prejudical to no on from whence it follows, that a diſſeiſor obtaining the releaſe the diſſeiſee, or a mortgagor redeeming his land, are in no da ger of the ſtatute in reſpect of any contract by them made, co cerning ſuch land after ſuch releaſe or redemption.

Plowd. 88, 89. Moor 655.

Sect. 16. X. That one who gains the poſſeſſion of land by virtue of a judgement at law in affirmance of an ancient titl cannot come within the meaning of this ſtatute in reſpect of an leaſe made of ſuch lands; for it can never be imagined, that was the intent of the ſtatute to oblige all perſons who ſhould re cover their lands, to occupy them themſelves, which would b generally inconvenient, and often wholly impracticable; an therefore it muſt be admitted from the neceſſity of the caſe, tha ſuch perſons may lawfully leaſe their lands and houſes to prope tenants, to be manured and occupied for the uſual rents: But i it ſhall appear, that the title to ſuch lands is ſtill conteſted not withſtanding ſuch recovery, and that ſuch leaſe was in truth de ſigned for the maintenance of the title, I can ſee no reaſon wh it ſhould not be as much within the ſtatute as any caſe whatſo ever. However there ſeems to be no doubt, but that if a diſſeiſee enter upon a diſſeiſor, being in poſſeſſion of the land under a pretended title, and immediately ſell it to a ſtranger, he is as much

much within the ſtatute as if he had been out of poſſeſſion at the time of ſuch ſale; for notwithſtanding his entry was lawful, and he had both the abſolute property and poſſeſſion of the land, yet inaſmuch as the diſſeiſor claims a title to it, which is yet in diſpute, ſuch a ſale by the diſſeiſee ſeems within the intent of the ſtatute, which meant abſolutely to reſtrain all perſons from tranſferring their diſputed titles to any ſtranger whatſoever. But it is ſaid, that ſuch a ſale by a father to his ſon and heir apparent, is excepted out of the general purview of the ſtatute, by common reaſon, which by the ties of nature as well as of intereſt, obliges ſuch a ſon to maintain his father; yet it hath been holden that ſuch a ſale to a brother of the half blood is within the ſtatute.

1 Leon. 166, 167. But Co. Lit. 369. ſeems contrary.

Savil 95, 96
1 Leon. 167.
Modern 656.

Sect. 17. XI. It is ſaid that the abovementioned proviſo, that, "one, who is in lawful poſſeſſion by taking the yearly rents or profits of lands, &c. may lawfully buy the pretended right of any other perſon by reaſonable means," is no more than the law would have implied, if it had not been expreſſed; for ſuch a contract cannot poſſibly be to the wrong of any one, and tends rather to quiet ſuits than to promote them. And from the like reaſon alſo it is ſaid, that a diſſeiſor may lawfully get the releaſe of the diſſeiſee, though his poſſeſſion was unlawful; and it ſeems clear, that ſuch a releaſe cannot come within the meaning of the ſtatute, if the diſſeiſee had the true right, and no other had any pretence of title to the land; for in ſuch caſe it is clear, that the end of the releaſe is not for maintenance, but for the ſettlement of all diſputes: But if ſuch a diſſeiſee had but a conteſted title, and ſuch releaſe were intended only to enable the diſſeiſor to defend himſelf with the dubious title of his diſſeiſee, ſurely it cannot but be as much within the meaning of the ſtatute, as any conveyance to one wholly out of poſſeſſion. However it ſeems clear, that thoſe inſtances in the ſaid proviſo, by which it is ſhewn how it ſhall appear, that the perſons who are permitted to contract for pretended titles are in poſſeſſion, as by the receiving of rent, &c. are only put for examples, and that thoſe, who are any way whatſoever lawfully ſeiſed in poſſeſſion, reverſion, or remainder, are within the benefit of the proviſo; but it ſeems clear, that they can only juſtify the taking ſuch a conveyance as will ſtrengthen the eſtate whereof they are ſeiſed, and that they cannot take a covenant from a ſtranger to convey the land to them, when he ſhall have recovered it on a pretended right, becauſe ſuch a covenant ſeems clearly to ſavour as much of maintenance, as if they had been ſtrangers to the land.

1 Leon. 167.
Savil 94, 96.

Co. Lit. 369.

Co. Lit. 369. b.

† Sect.

Vide 2 Hawk. page 382.

† *Sect.* 18. And it is enacted, by the 31 Eliz. c. 5. s. "That the offence of buying titles may be laid in any cou at the pleasure of the informer."

APPENDIX THE SIXTEENTH.

CHAPTER THE EIGHTY-SEVENTH.

OF SEDUCING ARTIFICERS.

In the cases of Rex v. Medcalf and Rex v. Knight, who were convicted by confession, upon this statute, on ONE information for seducing four different artificers the court held that they could inflict but ONE punishment it being but ONE information.

Burr. 2026.

IT is enacted by 5 Geo. 1. c. 27. "that whosoever sh "contract with, entice, endeavour to persuade or solicit a "manufacturer or artificer of, or in wool, iron, steel, br "or any other metal; clock-maker, watch-maker, or any oth "artificer or manufacturer of Great-Britain, to go out of t "kingdom into any foreign country, out of the king's dominio "on conviction by indictment or information at Westminst "or at the assizes, or at the quarter sessions, shall be fined "exceeding 100*l.* and suffer three months imprisonment; a "whoever shall offend a second time shall be fined at the d "cretion of the court, imprisoned twelve months, and in bo "cases be confined until the fine be paid. Provided the pro "cution be within twelve months."

† *Sect.* 2. And it is further enacted "that if any of "majesty's subjects within this kingdom, being such artificer "manufacturer as aforesaid, shall go into any country out of t "king's dominions, there to use or exercise, or to teach any "the said trades, or manufactures to foreigners, or who shall "so abroad, using or exercising the said trades or manufactur "beforementioned, and shall not return into and continue "this realm, within six months next, after warning shall "given to him by the ambassador, envoy, resident, minister, "consul of the crown of Great Britain in the country in whi "such artificer shall be, or by any person authorised by any "them, or by a secretary of state, he shall be incapable of ta "ing any legacy devised to him; or of being executor or adm "nistrator; or of taking any lands, tenements, or hereditament "by descent, devise, or purchase; and also forfeit all his esta "real and personal to his majesty's use; be deemed an alie "and out of the king's protection."

† *Sect.* 3. It is also enacted "that upon complaint on oat "to any justice of the peace, that any person is endeavourin "

" to ſeduce any ſuch artificer, or manufacturer as aforeſaid. " Or that ſuch artificer or manufacturer hath contracted, pro- " miſed, or is preparing to go abroad as aforeſaid, he may ſend " his warrant to bring the offender complained of before him or " ſome other juſtice of the ſame county, and if it ſhall appear " by the oath of one witneſs, or by confeſſion that ſuch perſon " is guilty of any of the offences aforeſaid, the juſtices may bind " him over with ſureties to appear at the next aſſizes, or quarter " ſeſſion, and in caſe he ſhall refuſe to give ſuch ſecurity, he ſhall " be committed to the county gaol until delivered by due courſe " of law. And if convicted upon any indictment, of any ſuch " promiſe, contract or preparation to go abroad as aforeſaid, he " ſhall give ſatisfactory ſecurity not to go abroad, and be impri- " ſoned until the ſame is given."

Sect. 4. To render the intent of the above recited ſtatute more effectual. It is enacted by 23 Geo. 2. c. 13. " that who- " ever ſhall contract with, entice, perſuade, or endeavour to " perſuade, ſolicit, or ſeduce any manufacturer, workman, or " artificer of, or in wool, mohair, cotton, or ſilk, or of, or in " any manufactures made up of theſe materials, or any of the " ſaid materials mixed one with another, or of, or in iron, ſteel, " braſs, or any other metal, or any clock-maker, watch-maker, " or any other manufacturer, workman, or artificer, of or in " any other of the manufactures of Great Britain or Ireland " into any foreign country not within the dominions of or belong- " ing to the crown of Great Britain, on conviction or informa- " tion at Weſtminſter, or by indictment at the aſſizes for the " county, if in England, or the court of juſticiary, or any cir- " cuit court in Scotland, or by indictment or information in the " king's bench in Ireland, ſhall forfeit for every artificer 500l. " ſuffer impriſonment in the county gaol for 12 calendar months, " and until the forfeiture ſhall be paid. And on a ſecond or " ſubſequent conviction for the like offence, the offender ſhall " forfeit one thouſand pounds, and be confined for two years as " aforeſaid, proſecution to be within twelve calendar months."

By Aſton J. the punniſhment directed by this act, PEREMPTORY and no DISCRETION is left in the court. Burrow 2016.

† *Sect.* 5. In the caſe of Rex. v. Cater, who was convicted upon theſe ſtatutes of ſeducing a *coach ſpring maker*, *Lord Mansfield* ſaid that this latter act ſeemed to be a repeal of the former act; for it was made to ſupply its deficiencies.

4 Burrow 2006 and the caſes there cited.

† *Sect.* 6. And it is enacted by 22 Geo. 3. c. 60. " that " whoever ſhall contract with, entice, perſuade, or endea- " vour to ſeduce or encourage any artificer, or workman, " concerned or employed, or who ſhall have worked at, or " been employed in printing callicoes, cottons, muſlins, or

" linens of any ſort, or in making or preparing any bloc
" plates, engines, tools, or utenſils for ſuch manufactory, to
" out of Great Britain to any parts beyond the ſeas, and ſh
" be convicted thereof upon indictment or information in
" court of king's bench at Weſtminſter, or by indictment at
" aſſizes, court of juſticiary, or circuit court in Scotland,
" the caſe may be; ſhall for every artificer, forfeit 500l. a
" ſuffer impriſonment in the common gaol for 12 calendar mont
" and until ſuch forfeiture be paid. And in caſe of a ſubſequ
" offence of the ſame kind, every perſon ſo offending aga
" ſhall, upon the like conviction, forfeit 1000l. and be confi
" two years as aforeſaid, half to the king, and half to the inf
" mer. But the proſecution muſt be in 12 months after the
" fence committed."

† *Sect.* 7. And it is further enacted, by 25 Geo. 3. c.
" That whoever ſhall contract with, entice, perſuade, or end
" vour to ſeduce or encourage any artificer or workman conce
" ed or employed, or who ſhall have worked at or been empl
" ed in the iron or ſteel manufactures in this kingdom, or
" making or preparing any tools or utenſils for ſuch manufacto
" to go out of Great Britain to any parts beyond the ſeas (
" cept to Ireland) and ſhall be convicted by indictment or inf
" mation in King's Bench or by indictment at the aſſizes, g
" delivery, or quarter ſeſſions for the county or place wher
" ſuch offence ſhall be committed, or the offender ſhall live
" reſide, or by indictment in the court of juſticiary, &c. in Sc
" land, as the caſe may be, ſhall for every artificer forfeit a
" be puniſhed in the manner laſt before directed; proſecuti
" to be within 12 months." (1)

(1) N. B. For employing artificers in certain branches of manufacture, for the regulat
of their wages; and for the puniſhments of their diſobedience. Vide 4 Burn's Juſti
124 to 177.

APPENDIX THE SEVENTEENTH.

CHAPTER THE EIGHTY-EIGHTH.

OF ACTING PLAYS WITHOUT LICENCE.

IT is enacted by 10 Geo. 2. c. 28. " That every perſ
" who ſhall for hire, gain, or reward, act, repreſent
" perform, or cauſe to be acted, repreſented or perform
" any interlude, tragedy, comedy, opera, play, farce,
" other entertainment of the ſtage, or any part or pa
" therein, in caſe ſuch perſon ſhall not have any legal ſettl
" ment in the place where the ſame ſhall be acted, repreſen
" e

" ed or performed without letters patent or licence from the " chamberlain ſhall be deemed a rogue and vagabond, and ſuffer " accordingly, unleſs, having or not having a legal ſettlement, he " ſhall for every ſuch offence forfeit fifty pounds."

† *Sect.* 2. And it is further enacted, " That no perſon ſhall " for hire, gain or reward, act, perform, repreſent, or cauſe to " be acted, performed or repreſented any entertainment of the " ſtage, or any new act, ſcene, or other part added to any old " interlude or other entertainment of the ſtage, or any new pro- " logue or epilogue unleſs a true copy thereof be ſent to the Lord " Chamberlain, fourteen days, at leaſt, before the acting, re- " preſenting or performing thereof, together with an account of " the play-houſe or other place where the ſame ſhall be, and the " time when the ſame is intended to be firſt acted; ſigned by " the manager, or one of the managers of ſuch play-houſe or " company of actors therein, on pain of fifty pounds." A copy of all dramas to be ſent to the chamberlain.

† *Sect.* 3. And it is further enacted, " That the Lord Cham- " berlain ſhall in his diſcretion, prohibit the acting, performing, " or repreſenting any interlude, tragedy, comedy, opera, play, " farce, or other entertainment of the ſtage, or any act, ſcene " or part thereof or any prologue, or epilogue; and every per- " ſon offending againſt ſuch prohibition or againſt the proviſion " of the foregoing ſection, ſhall forfeit 50l. and the manager's " licence, if one was granted, ſhall alſo be null and void." The acting of which he may prohibit.

† *Sect.* 4. And it is alſo enacted, " That if any entertain- " ment of the ſtage as above deſcribed ſhall be acted, repreſented " or performed in any houſe or place where wine, ale, beer or " other liquors ſhall be ſold or retailed, the ſame ſhall be deem- " ed to be acted for gain, hire, and reward." No plays to be acted in public houſes.

† *Sect.* 5. And it is further enacted, " That all pecuniary " penalties ſhall be recovered in a ſummary way before two juſ " tices for the county or place where any ſuch offence ſhall be " committed, by confeſſion, or on the oath of one witneſs or in " any of the courts of record at Weſtminſter by action, *&c.* " Or before the court of ſeſſion in Scotland, according to the " locality of the offence, to be levied by diſtreſs and ſale, for " the equal benefit of the informer, and the poor, and for want " of diſtreſs the offender ſhall be committed to any houſe of " correction for the county or place, not exceeding ſix months. " But an appeal may be made to the next quarter ſeſſions, whoſe " order ſhall be concluſive. Proſecution to be within ſix months, " and the ſpecial matter may be given in evidence on the ge- " neral iſſue." How the penalties may be recovered.

APPENDIX THE EIGHTEENTH.

CHAPTER THE EIGHTY-NINTH.

OF EMBEZZLING NAVAL STORES.

THE evidence, upon profecutions for ſtealing and embezzling the king's ſtores, ſeldom amounting to more than the "ſuch goods are marked with the king's mark, and found in the cuſtody and poſſeſſion of the perſon accuſed. And this want direct proof, that the offender actually carried away the goods tending to encourage this evil practice, it is enacted by 9 and 10 Will. 3. c. 41. ſ. 1. "That it ſhall not be lawful to or for any "perſon or perſons whatſoever, other than perſons authoriſed by "contracting with his majeſty's principal officers or commiſſioners "of the navy, ordnance, or victualling office for his majeſty's "uſe, to make any ſtores of war, or naval ſtores whatſoever "with the marks uſually uſed to, and marked upon his majeſty's "ſaid warlike and naval or ordnance ſtores; that is to ſay, any "cordage of three inches and upwards, wrought with a white "thread laid the contrary way, or any ſmall cordage, to wit, "from three inches downwards with a twine in lieu of a white "thread, laid the contrary way as aforeſaid, or any canvas "wrought or unwrought, with a blue ſtreak in the middle, or "any other ſtores with the broad arrow, by ſtamp, brand, or "otherwiſe; upon pain of forfeiting ſuch goods, and the ſum "of 200l. together with coſts of ſuit; one moiety to the king, "the other moiety to the informer, to be recovered in any of his "majeſty's courts of record at Weſtminſter."

For the offence of embezzling the king's armour, vide ante p. 75.

In what manner they ſhall be marked.

† *Sect.* 2. And it is farther enacted par. 2. "That ſuch perſon or perſons in whoſe cuſtody, poſſeſſion, or keeping, ſuch "goods or ſtores marked as aforeſaid, ſhall be found, (a) not "being employed as aforeſaid; and ſuch perſon or perſons "who ſhall conceal ſuch goods or ſtores marked as aforeſaid, being indicted and convicted of ſuch concealment, or of having "ſuch goods found in his cuſtody, poſſeſſion, or keeping, ſhall "forfeit ſuch goods, and 200l. with the coſts of the proſecution "to be equally divided between the king and the informer, and "alſo ſuffer impriſonment until payment thereof, unleſs ſuch "perſon ſhall, upon his trial, produce a certificate under the "hand of three or more of his majeſty's principal officers or "commiſſioners of the navy, ordnance, or victuallers, expreſſing "the numbers, quantities, or weights of ſuch goods as he or ſhe "ſhall then be indicted for, and the occaſion and reaſon of "ſuch goods coming to his or her hands or poſſeſſion. And by "par. 4. the commiſſioners, upon felling any ſuch ſtores, are "empowered

Penalty for having them in cuſtody.

(a) The goods muſt be found in the cuſtody of the offender; for it is their being ſo found and not their having them, which conſtitutes the offence. Ld. Ray. 1105.

"empowered to grant such certficates, expressing the quantities "of such stores, and the time when and where they were "bought of the said commissioners, within 30 days after their "sale and delivery. And the said purchaser may also grant "certificates to the person to whom *they* may sell the said "stores."

Unless under a certificate. Which the commissioners may grant.

† *Sect.* 3. And it is farther enacted by 1 Geo. 1. s. 2. c. 25. s. 6. "That if any person shall counterfeit the hand of any "officers of the navy to any paper whereby his majesty's treasure "may be disposed of, or shall knowingly produce the same, he "shall be bound over by the said officers and commissioners, or "any of them, until he find surety to appear at the next assizes, "or quarter sessions, to be there proceeded against according to "law."

Counterfeiting certificates.

† *Sect.* 4. And it is farther enacted par. 5. "That if any be "sued for discovering or seizing such stores, the general issue "may be pleaded, and the special matter given in evidence. "And in case upon the trial of such issue, the defendants shall "prove the goods were marked as aforesaid, and the plaintiff "shall not prove he was employed as aforesaid, and had such "certificate as aforesaid, and did shew the same to the defendant "before suit brought, the defendant shall be acquitted and re-"ceive treble costs, unless the defendant, upon the sight of such "certificate did not deliver back all such goods and stores so "seized in as good plight and condition as they were at the time "of such certificate shewn."

How prosecutions may be defended.

† *Sect.* 5. And it is farther enacted by 9 Geo. 1. c. 8. s. 3. "That if any person or persons shall be lawfully convicted of "having in his, her, or their custody, any timber, thick stuff, "or plank marked with the broad arrow, or concealing any tim-"ber, thick stuff or plank so marked, he shall suffer as an offen-"der against 9 and 10 Will. 3. c. 41, above recited."

Extended to timber, thick stuff and plank.

† *Sect.* 6. But it is provided by par. 4, "That any judge "before whom any offender shall be convicted of any crimes "before recited, enacted or mentioned in *this* act, may mitigate "the penalty for the same."

Judges may mitigate the penalty.

† *Sect.* 7. And it is farther enacted par. 3. "That if any "dispute arise between the persons upon whose informations or "oaths any offender against this act, or the 9 and 10 Will. 3. c. "41. shall be prosecuted and convicted, touching any right or "title to any of the forfeitures or penalties before-mentioned, or "any part thereof, the judge or justice convicting shall examine "and settle the same."

How disputes respecting the forfeitures shall be settled.

† *Sect.* 8. And it is farther enacted by 17 Geo. 2. c. 40. s. 10. "That any judge at the assizes, or justices of the peace,

Before whom the offence may be tried.

" at the general quarter ſeſſions, may hear, try, and determine
(a) For the form of the indictment. Vide Crown Cir. Comp. 358.
" by indictment (a) or otherwiſe, all or any the crimes or of
" fences mentioned in the ſaid recited act of 9 and 10 Will
" 3. c. 41. and 9 Geo. 1. c, 8. And that the ſaid juſtices of aſ
" ſize or quarter ſeſſions may impoſe any fine, not exceeding
" 20ol. on ſuch offender, one moiety to the king, and the other
" moiety to the informer; and may mitigate the ſaid penalty
" and forfeitures, inflicted by the ſaid recited acts, or either o
" them, and commit the offender to the common gaol till paid. O
" in lieu thereof may puniſh ſuch offender corporally, by cauſ
" ing him to be publickly whipped, and committed to ſome
" houſe of correction to hard labour for three months, or for
" leſs time as to ſuch judge of aſſize, or quarter ſeſſion ſhall ſeem
" meet."

Commiſſioners, &c. may act as magiſtrates.

† *Sect.* 9. And it is further enacted by 9 Geo. 3. c. 30. ſ. 5
" That the treaſurer, comptroller, ſurveyor, clerk of the acts,
" or any commiſſioner of the navy for the time being, may act
" as juſtices of the peace, to all intents and purpoſes in cauſing
" any perſon or perſons who ſhall be charged with ſtealing or
" embezzling any naval ſtores, the property of his majeſty, to
" be apprehended, committed and proſecuted for the ſame."

APPENDIX THE NINETEENTH.

CHAPTER THE NINETIETH.

OF EXERCISING A TRADE WITHOUT SERVING AN APPRENTICESHIP.

4 Modern 145. 2 Keb. 403. Cro. Car. 316. Hobart 184. Styles 223. 2 Roll. 576.

IT is enacted by 5 Eliz. c. 4. ſ. 31. That it ſhall not
" be lawful to any perſon or perſons, other than ſuch as
" now do lawfully uſe or exerciſe any art, myſtery or manual
" occupation, to ſet up, occupy, uſe or exerciſe any craft,
" myſtery, or occupation now uſed or occupied within the
" realm of England or Wales; except he ſhall have been
" brought up therein ſeven years at leaſt as an apprentice in
" the manner and form as the act deſcribes; nor to ſet any
" perſon to work in ſuch myſtery, art, or occupation being
" not a workman at this day; except he ſhall have been ap-
" prentice as is aforeſaid; or elſe having ſerved as an appren-
" tice as is aforeſaid, ſhall or will become a journeyman, or be
" hired by the year; on pain of forfeiting for every default
" forty ſhillings for every month; one moiety to the crown,
" the other to the proſecutor; to be ſued for in any court of
" record;

"record; before juſtices of oyer and terminer; any other "juſtices, one to be of the quorum or preſident and council, "by action of debt, information, bill of complaint or other-"wiſe, &c. &c." Moor 886. C. Eliz. 499. 1 Salk. 370, 611. L. Raym. 767. 6 Mod. 220.

An information QUI TAM may be brought at the quarter ſeſſions upon this ſtatute. Farren v. Williams. Cowper 369.

This ſtatute extends to pariſhes. 1 Burr. 366, and to reſtrain the uſe of any trade which was then uſed or is mentioned in the third ſection of the act. 8 Co. 129. Salk. 611. As a draper Hard. 54. 2 Keb. 403. Sty. 223. Ironmonger C. Car. 316. Soap-maker, knife ſtuff maker. Hard 54. Brewer 2 Cro. 178. Palmer 543. Baker 2 Roll. 376. Taylor 1 Lev. 243. Upholſterer Salk. 611. Point maker Cro. Car. 516. Spurrier 2 Cro. 179. Tyler 4 Mod. 145. Fellmonger Salk. 611. Tanner 2 Burr. 1035. Barber, 1 Lev. 87. 2 Lev. 226. Cook 8 Co. 129. Nor is the freedom of the city any releaſe from the reſtraint. 1. Saund. 311. Even if the party be alien or denizen. Hutton 132. Or has ſerved as apprentice to another trade. Show. 260. Sed Vide 4 Leonard 9. 2 Bulſ. 190. Or though the widow of a qualified trader. Noy. 5. unleſs ſhe aſſiſted her huſband ſeven years. Carth. 163. Nor does a ſervice beyond the ſeas releaſe the reſtraint unleſs the ſervant was indented. Salk. 67. Sed. Dub. So an unqualified maſter cannot employ a qualified ſervant. Show. 241. 3 Mod 315. Salk. 610. Carth. 163. And when the indenture is exempted from the ſtamp duty of 8 Ann. c. 9. ſ. 32. Vide 1 Wilſ. 129.

But this ſtatute does not extend to trades where no ſkill is required. 2 Bulſ. 190. 1 Roll. 10. Salk. 611. 1 Vent. 326, 346. 2 Lev. 230. Cro. Car. 499. And if an unqualified maſter has exerciſed the trade for ſeven years without interruption he ſhall not be ſued. 2 Wilſ. 168. Nor is a dormant partner, though unqualified, within the penalties of the act. 2 Wilſ. 40. 1 Burr. 2. Nor a journeyman 4 Burr. 2449.

APPENDIX THE TWENTIETH.

CHAPTER THE NINETY-FIRST.

Of GRANTING FRAUDULENT PERMITS.

IT is enacted by 6 Geo. 1. c. 21. ſ. 11 and 12. "That all "diſtillers, makers or ſellers of, or dealers in *ſpirituous liquors* "(a) either Britiſh or foreign, ſhall make an entry in writing, "of the places made uſe of by them reſpectively for the keeping "or ſelling of ſuch commodities, at the office of exciſe within "the limits whereof ſuch place ſhall be ſituated, and alſo of all "*ſuch ſpirituous* liquors as ſhall be therein at the time of making "ſuch entry, on pain of forfeiture and penalty of 20l."

(a) Viz. brandy; arrack, rum, ſpirits or ſtrong waters.

† *Sect.* 2. And it is further enacted, par. 13. "That "none of the ſaid commodities ſhall be brought into ſuch en-"tered place without firſt giving notice thereof to the officer "of exciſe of the diviſion; and producing to, and leaving with, "the ſaid officer an *authentic certificate*, that the duties have "been actually paid, or that the ſame has been condemn-

" ed as forfeited.—Or was part of the ſtock of ſome import
" or dealer whoſe warehouſe or place ſhall be entered as afor
" ſaid, expreſſing the quantity and quality thereof; and at wh
" port or place the duties were ſo paid, or the commodity ſo co
" demned, or *of whoſe ſtock the ſame was part* upon pain of fo
" feiture."

† *Sect.* 3. And it is further enacted, par. 15. " That no *fu*
" *commodities* ſhall be ſold, uttered, or expoſed to ſale, either
" wholeſale or retail, but in ſome or one of the ſaid warehouſ
" or places as aforeſaid, on pain of 40s, a gallon, *&c.*

† *Sect.* 4. And it is further enacted, par. 16. " That t
" officers of exciſe where ſuch commodities ſhall be ſo ſold, ſha
" *upon the requeſt of the ſeller*, without fee or reward, give to th
" reſpective buyers thereof certificates in writing ſigned by th
" ſaid officer or officers expreſſing the quantities ſo ſold, and th
" name and names of the reſpective buyers, and ſellers thereof
" and that the duty on ſuch article ſo ſold has been paid, or tha
" the ſame has been condemned as forfeited; or was part
" ſuch dealer's ſtock as aforeſaid:—to ſatisfy the officer of exci
" of the reſpective diviſions to which the ſame is intended to b
" carried."

† *Sect.* 5. And it is further enacted, par. 17. " That n
" *ſuch commodities*, exceeding the quantity of one gallon ſhall b
" removed or carried from any part of this kingdom to another
" by land, or by water, without ſuch *permit or certificate*, on pai
" of forfeiture."

† *Sect.* 6. And it is further enacted, par. 18. " That who
" ever ſhall have in cuſtody above the quantity of ſixty thre
" gallons ſhall be deemed a dealer.

† *Sect.* 7. But as dealers have frequently practiſed the tric
of taking out falſe permits for the purpoſe of protecting and con
veying ſuch commodities which they had clandeſtinely run on
ſhore; it is further enacted, by 11 Geo. 1. c. 30. ſ. 10. " Tha
(a) Coffee, tea, and chocolate. " the ſaid commodities (a) ſhall be removed within a certain
" time to be ſpecified in ſuch permit, and that the permit ſhall
" be returned to the officer from whom the ſame was had, and
" that in caſe, upon taking an account of the ſtock of the perſon
" from or out of whoſe ſtock the commodities mentioned in ſuch
" permit are authoriſed to be removed, there ſhall not appear a
" ſufficient decreaſe to anſwer the removal mentioned in ſuch
" permit, the perſon from whoſe ſtock ſuch permit granted the
" removal, ſhall forfeit the like quantity as ſhall be mentioned
" in ſuch permit as aforeſaid."

† *Sect.*

† *Sect.* 8. And it is further enacted, "That no perſon ſhall "demand, take, or receive, any permit as aforeſaid, without "ſpecial direction in writing, of the perſon, or his *known* ſer-"vants, from, or out of, whoſe ſtock the ſaid commodities are "ſo to be removed, on pain of 50*l.*"

† *Sect.* 9. By 23 Geo. 3. c. 70. ſ. 3, 4, 5. directions are given in what manner permits ſhall be taken out, and what particulars ſhall be ſpecified in the requeſt notes from the trader for that purpoſe.

† *Sect.* 10. The commiſſioners of exciſe for England and Scotland are alſo directed by the ſaid ſtatute, par. 8. "To "provide moulds for making of paper to be uſed for permits, "which paper ſhall have the words EXCISE OFFICE, viſible in "the ſubſtance of ſuch paper; and the ſaid commiſſioners ſhall "alſo provide plates engraved with certain marks, ſtamps and "devices, to be varied from time to time as they ſhall think pro-"per, for the printing, marking and ſtamping of the ſaid paper."

† *Sect.* 11. And it is further enacted by the ſaid ſtatute, 23 Geo. 3. c. 30. ſ. 9. "That if any perſon or perſons whatſo-"ſoever (not being authoriſed by the reſpective commiſſioners ſo "to do) ſhall make or cauſe or procure to be made, or ſhall "knowingly aid or aſſiſt in the making or without being autho-"riſed or appointed as aforeſaid, ſhall knowingly have in his, "her or their cuſtody or poſſeſſion, without lawful excuſe (the "proof whereof ſhall lie upon the perſon accuſed) any frame, "mould or inſtrument for the making of paper with the words, "EXCISE OFFICE viſible in the ſubſtance of ſuch paper; or "ſhall make, or cauſe, or procure to be made, or knowingly aid "or aſſiſt in the making any paper, in the ſubſtance of which the "words, EXCISE OFFICE ſhall be viſible; or if any perſon "(except as before excepted) ſhall by an act, myſtery or con-"trivance, cauſe or procure the ſaid words, EXCISE OFFICE to "appear viſible in the ſubſtance of any paper whatever—Or if "any perſon or perſons whatever (not being appointed as afore-"ſaid) ſhall engrave, cut out, or make, or ſhall cauſe or pro-"cure to be engraven, caſt, cut, or made any plate or plates or "other thing with any mark, ſtamp, or device thereon, in imi-"tation of, or to reſemble any mark, ſtamp, or device made "and uſed by the direction of the ſaid commiſſioners of exciſe, "or the major part of them reſpectively, in manner as afore-"ſaid (a) for the purpoſe of printing, ſtamping, and marking of "the paper to be uſed for a permit or permits to accompany *any* "exciſeable commodity or commodities removing or removed "from one part of this kingdom to any other part thereof in pur-

(a) Vide the 8th ſection of the act.

"ſuance

" ſuance of the ſeveral ſtatutes requiring ſuch permit, any p
" ſon ſo offending in any of the caſes aforeſaid, ſhall on conv
" tion be adjudged a felon, and ſuffer death without benefit
" clergy."

† *Sect.* 12. And it is farther enacted by the ſaid ſtatute, p
10. " That if any perſon or perſons whatſoever, ſhall counte
" feit or forge or cauſe to be counterfeited, or forged any perm
" for the removal of any exciſeable commodity from one pa
" of this kingdom to any other part thereof, for the removal
" which a permit or certificate is by any act or acts of parliame
" now in force required;—or if any perſon or perſons ſh
" knowingly or willingly give any falſe or untrue permit, or ſh
" knowingly or willingly accept or receive any falſe or untr
" permit with any ſuch exciſeable commodity to be removed,
" removed as aforeſaid; or if any perſon or perſons ſhall fra
" dulently alter or eraſe any permit after the ſame ſhall ha
" been given or granted by the proper officer of exciſe, or
" any perſon or perſons ſhall knowingly or willingly publi
" or make uſe of any ſuch permit ſo counterfeited, forge
" falſe, untrue, altered, or eraſed; every perſon ſo offen
" ing ſhall (in lieu of any former penalty) for each and eve
" ſuch offence forfeit five hundred pounds to be recovered in a
" court of record at *Weſtminſter*, or in the court of exchequer
" *Scotland*."

† *Sect.* 13. And it is further enacted, par. 11. " That
" *any officer of exciſe or other inland duties* ſhall deliver out, or ſu
" fer to be delivered out, any paper having the words, EXCI
" OFFICE viſible in the ſubſtance thereof either before or aft
(a) Vide ſupra ſection the 9th. " the ſtamp or mark ſo to be provided as aforeſaid (a) ſhall
" printed thereon, or before the ſame ſhall be filled up agree
" ble to the requeſt note, brought from any trader for the pu
" poſe of having a permit for the removal of ſome exciſeab
" commodity; or if any *ſuch officer* ſhall knowingly give
" grant any falſe or untrue permit; or ſhall make any falſe
" untrue permit; or ſhall make any falſe or untrue entry in t
" counter-part or counter-parts of any permit or permits by hi
" given or granted for the removal of any exciſeable commodi
" from the ſtock of any dealer therein; or ſhall knowingly a
" willingly receive or take any exciſeable commodity whatſoev
" into the ſtock of any ſuch dealer, brought in with any falſ
" forged, or untrue permit, or ſhall knowingly permit or ſuff
" the ſame to be done, directly or indirectly, contrary to the tr
(b) Vide the caſe of James Wortly convicted upon this clauſe Old Bailey ſeſſions, 16 January, 1787. " intent and meaning of the ſeveral ſtatutes (b) in ſuch caſe ma
" and provided, every ſuch officer ſo offending ſhall, on convi
" tion, be adjudged guilty of felony and ſhall be tranſporte
" not exceeding ſeven years."

APPEN

APPENDIX THE TWENTY-FIRST.

CHAPTER THE NINETY-SECOND.

OF SURCHARGING BOATS, &c.

FOR preventing the loſing of lives of perſons paſſing on the river Thames between Graveſend and Windſor, it is enacted by 10 Geo. 2. c. 31. ſ. 8. "That no perſon or perſons who ſhall work or navigate any tilt boat, row-barge, or any other boat or wherry for hire or gain ſhall receive, take into or carry in any ſuch tilt, or row-barge at one and the ſame time any more than 37 paſſengers, and three more paſſengers only by the way—nor ſhall receive take into or carry in any other boat or wherry any more than eight paſſengers and two more only if called in by the way, nor ſhall receive take into or carry in any ferry-boat or wherry allowed to work on *Sundays* any more than eight paſſengers at one and the ſame time; on pain of 50 *l.* for the firſt offence 10 *l.* for the ſecond offence, and for the third offence ſhall be diſabled to work any boat or veſſel, &c. and be diſfranchiſed of the waterman's company for twelve months, on conviction by one witneſs before one magiſtrate."

† *Sect.* 2. And it is further enacted, "That in caſe any greater number of perſons ſhall be received, taken into, or carried in any ſuch tilt boats, row-barges, ferry-boats, or other boats or wherries than are reſpectively allowed to be carried as aforeſaid and any paſſenger or paſſengers ſhall then be drowned, every ſuch perſon or perſons who ſhall work or navigate ſuch tilt boats, row-barges, ferry-boats, or other boats or wherries offending therein, ſhall be *deemed guilty of felony and tranſported as felons.*"

APPENDIX THE TWENTY-SECOND.

CHAPTER THE NINETY-THIRD.

OF VAGRANTS.

IT is enacted by 17 Geo. 2. c. 5. "That all perſons who "threaten to run away and leave their wives or children to the pariſh—And all perſons who ſhall unlawfully return to ſuch pariſh or place from whence they have been legally removed by order of two juſtices without a certificate from the place wherennto they belong.—And all perſons who, not hav- Idle and diſorderly perſons.

"ing

" ing wherewith to maintain themſelves, live idle without empl
" ment, and refuſe to work for the uſual and common wa
" given to other labourers for the like work in the pariſhes
" places where they are. And all perſons going about from d
" to door or placing themſelves in the ſtreets, highways or paſſa
" to beg or gather alms in the pariſhes or places where they dw
" ſhall be decreed—IDLE AND DISORDERLY PERSONS."

† *Sect.* 2. And it is further enacted, " That any juſtice m
" commit ſuch offender, on conviction before him, by his o
" view, their confeſſion, or the oath of one witneſs, to the hou
" of correction not exceeding one month."

(a) For which the juſtice may order the overſeer to pay him 5s. vide 4 Burr. 335.

† *Sect.* 3. And any perſon may apprehend (a) and carry b
fore a juſtice any ſuch perſons going about from door to door
placing themſelves in ſtreets, highways or paſſages to beg or g
ther alms in pariſhes or places where they dwell; and if th
reſiſt or eſcape they ſhall be puniſhed as—ROGUES AND VAGA
BONDS.

Rogues and vagabonds.—For another ſpecies of rogues and vagabonds. Vide 23 Geo. 3 c. 88. ante page 148. and 105.

† *Sect.* 4. And it is further enacted, par. 2. " That all per
" ſons going about as patent gatherers or garherers of alms, un
" der pretences of loſs by fire or other caſualty—or going abou
" as collectors for priſons, gaols, or hoſpitals; all fencers or bear
" wards, all common players of interludes, all perſons who ſha
" for hire, gain or reward, act, repreſent or perform, or cauſ
" to be acted, &c. any entertainment of the ſtage or any part o
" parts thereof not being authoriſed by law, all minſtrels (b) an
" jugglers, all perſons pretending to be gypſies, or wandering i
" the habit or form of Egyptians, (c) or pretending to hav
" ſkill in phyſiognomy, palmeſtry, or like crafty ſcience, or pre
" tending to tell fortunes, or uſing any ſubtle craft to deceive an
" impoſe upon any of his majeſty's ſubjects, or playing at any
" unlawful games or plays; and all perſons who run away an
" leave their wives and children whereby they become chargeable
" to any pariſh or place—and all petty chapmen and pedlars
" wandering abroad without licence, and all perſons wandering
" abroad and lodging in alehouſes, barns, out-houſes, or in the
" open air not giving a good account of themſelves—and all per-
" ſons wandering abroad and begging, pretending to be ſoldiers,
" mariners, ſea-faring men, (d) or pretending to go to work in
" harveſt.—And all other perſons wandering abroad and begging
" ſhall be deemed—ROGUES AND VAGABONDS."

(b) Vide 4 Burns Juſtice 333. and ante p. 198.
(c) Vide 4. Burn's Juſtice, 335.

(d) This ſhall not extend to the 31 Eliz. c. 17. Vide ante page 183.

Incorrigible rogues.

† *Sect.* 5. And it is further enacted, par. 4. " That all end
" gatherers convicted according to 13 Geo. 1. c. 23.—And all
" perſons

"perſons apprehended as rogues and vagabonds, and eſcaped "from the perſons apprehending them, or refuſing to go before a "juſtice, or to be examined upon oath, or refuſing to be convey-"ed by ſuch paſs as this act mentions, or knowingly giving a "falſe account of themſelves upon ſuch examination, after warn-"ing given them of their puniſhment. And all rogues and va-"gabonds who ſhall break or eſcape out of any houſe of correc-"tion when confined by virtue of this act. And all perſons who "after having been puniſhed as rogues and vagabonds and diſ-"charged ſhall again commit any of the ſaid offences ſhall be "deemed—INCORRIGIBLE ROGUES."

† *Sect.* 6. And it is further enacted, par. 5. "That any "perſon may apprehend the offender and carry him before a "juſtice (a) and in caſe he ſhall be charged by a juſtice ſo to do, "and ſhall not uſe his beſt endeavours for ſuch purpoſe he ſhall "forfeit ten ſhillings."

(a) For which the juſtice may order a reward of 10s. to be paid by the county.

† *Sect.* 7. And it is further enacted, par. 6. "That two "juſtices ſhall meet four times in the year or oftner if need be, "in their reſpective diviſions, and by warrant command the con-"ſtable, &c. to make a general privy ſearch in one night, for "the apprehending of ROGUES AND VAGABONDS. And every "juſtice on information ſhall iſſue his warrant to apprehend "rogues and vagabonds within his juriſdiction.

Privy ſearch.

† *Sect.* 8. And it is further enacted, par. 7. "That the juſ-"tice ſhall inform himſelf by the examination on the oath of the "perſon ſo apprehended, or of any other perſon, of the condi-"tion and circumſtances of ſuch perſon and where he was laſt le-"gally ſettled; the ſubſtance of which ſhall be put into writing "and ſubſcribed by the perſon examined, and by the juſtice who "ſhall tranſmit the ſame to the next quarter ſeſſion—And ſuch "juſtice ſhall order the perſon ſo apprehended to be *publickly* "whipped (b) and ſent to the houſe of correction until the next "quarter ſeſſion or for any leſs time, or convey him by paſs "under hand and ſeal to the laſt place of legal ſettlement; but "if it cannot be found then to the place of birth, or if ſuch per-"ſon be under the age of fourteen years, and have any father or "mother living then to their place of abode there to be delivered "to the pariſh officers, a duplicate of which paſs and examination "ſhall be filed at the next quarter ſeſſions."

Examination.

Puniſhment.

(b) Vide 22. Hen. 8. c. 12. 39 Eliz. c. 4.

† *Sect.* 9. And it is further enacted, par. 9. "That where "any offender ſhall be committed till the next ſeſſion, and the "juſtices ſhall adjudge ſuch perſon a rogue and vagabond, or an "incorrigible rogue, they may order him to be detained in the "houſe

Further puniſhment.

" houſe of correction not exceeding ſix months, and ſuch in
Tranſportation " rigible rogue for any further time not exceeding two years
" leſs than ſix months, and whipped, and afterwards be ſent a
" by ſuch paſs *mutatis mutandis* as aforeſaid.—And if ſuch pe
" *being a male* is above the age of twelve years the ſeſſion
" ſend him to be employed in his majeſty's ſervice either by
" or land. And in caſe any ſuch incorrigible rogue ſhall brea
" eſcape from the houſe of correction, or ſhall offend again in
" manner he ſhall be tranſported for ſeven years."

† *Sect.* 10. And it is enacted by 13 and 14 Car. 1. c.
" That the juſtices in ſeſſions may tranſport ſuch rogues, va
" bonds, and ſturdy beggars, as ſhall be convicted and adjud
" to be incorrigible."

Vagrant children. † *Sect.* 11. And it is alſo enacted by 17 Geo. 2. c. 5. ſ.
" That if the child of any vagrant above ſeven years of age ſh
" be committed to the houſe of correction, the juſtices in ſeſſi
" may order ſuch child to be placed out as a ſervant or appr
" tice until the attainment of 21 years or for a leſs time, and
" any offender found wandering with ſuch child, ſhall be ag
" found with the ſame child ſo placed out, he ſhall be deemed
" INCORRIGIBLE ROGUE."

† *Sect.* 12. And it is further enacted, "That where any
" grants have been committed to the houſe of correction till t
" next ſeſſions, if on examination of ſuch perſons no place can
" found, to which they may be conveyed, the ſeſſions ſhall ord
" them to be detained and employed in ſuch houſe of correcti
" until they can provide for themſelves, or until the juſtices
" ſeſſions can place them in ſome lawful calling as ſervants or a
" prentices, ſoldiers, mariners or otherwiſe."

† *Sect.* 13. And it is further enacted, par. 10. "That t
" juſtice who ſhall make the paſs, ſhall at the ſame time deliv
" to the officer appointed to convey *the vagrant* a note or certi
(a) The act pre- " cate (a) aſcertaining how they are to be conveyed, by horſe, ca
ſcribes the form of the certificate. " or on foot, and what allowance ſuch officer is to have, accor
" ing to the rates appointed by the ſeſſion. By ſect. 16. Whi
" rates the juſtices are authoriſed to make as they ſhall think pr
" per."

Conveying of vagrants. † *Sect.* 14. And it is further enacted, par. 11. "That t
" officer ſhall convey the perſon accordingly, the next direct wa
" to where he is ordered to be ſent, if in the ſame county, ri
" ing, diviſion, corporation or franchiſe; if not he ſhall deliv
" the perſon to the conſtable of the firſt place in the next count
" &c. &c. in the direct way to the place whither he is to be co
" veyed, together with the paſs and duplicate of the examinat
" on, taking his receipt for the ſame. And ſuch conſtable ſh
" imm

"immediately apply to ſome juſtice of the diviſion, who ſhall "make the like certificate and deliver it to ſuch conſtable who "ſhall with all ſpeed convey ſuch perſon unto the firſt pariſh, "town or place in the next county or diviſion in the direct way "to the place to which he is to be conveyed. And ſo from one "county or diviſion to another, till they come to the place to "which ſuch perſon is ſent, and the conſtable who ſhall deliver "ſuch perſon to the churchwarden or other perſon ordered to re- "ceive him, ſhall at the ſame time deliver the ſaid paſs with the "duplicate of the examination, taking their receipt for the ſame."

Vagrants may be ſearched.

† *Sect.* 15. And it is further enacted, par. 12. "That any "juſtice may order the vagrant to be ſearched, and his bundles "to be inſpected in his preſence; and if he ſhall be found to "have ſufficient for his paſſage, either in whole or in part, the "juſtice ſhall order ſo much of the money to be paid, or, if other "effects, to be ſold towards taking up and paſſing ſuch va- "grant, &c."

Duty of the conſtables.

† *Sect.* 16. And it is further enacted, par. 17. "That if any "petty conſtable ſhall bring to any high conſtable ſuch certificate "as aforeſaid, together with a receipt or note from the conſtable "to whom the perſon was delivered, the ſaid high conſtable ſhall "pay the rates aſcertained by ſuch certificate, taking the petty "conſtable's receipt; the high conſtable to be allowed the ſame "on paſſing his accounts, on his delivering up ſuch certificate and "receipt, and giving his own receipt for the ſame to ſuch trea- "ſurer; the ſame to be allowed the treaſurer in his accounts on "delivering up the vouchers as aforeſaid, and if the high con- "ſtable ſhall refuſe or neglect to pay the ſame on demand, it "ſhall be lawful for one juſtice, by his warrant, to levy double "the ſum by diſtreſs, and thereout to allow the petty conſtable "the ſum aſcertained by the certificate and ſuch other recom- "pence for his trouble, loſs of time, and expences as the juſtice "ſhall think fit; the overplus to be returned to the conſtable on "demand. And in cities, towns corporate and other places where "there is no high conſtable, the petty conſtable ſhall be allowed "what he ſhall ſo pay purſuant to ſuch certificate in his accounts "on delivering up ſuch vouchers; or if any maſter of a houſe "of correction ſhall deliver ſuch certificate and receipt to the "treaſurer, the treaſurer ſhall pay the ſame to him taking his "receipt for the ſame and be allowed the ſame in his accounts, "&c."

Expence of conveying.

† *Sect.* 17. And it is enacted by 26 Geo. 2. c. 34. ſ. 2. "That when the high conſtable hath not money in his hands "ſufficient to anſwer the ſaid expences the treaſurer ſhall pay "the

" the ſame to ſuch petty conſtable on his producing the ce
" ficate and ſuch other vouchers as aforeſaid."

Penalty of counterfeiting certificate.

† *Sect.* 18. And it is further enacted, by 17 Geo. 2 c. ſ. 18. " That if any petty conſtable or governor of any ho " of correction ſhall counterfeit any ſuch certificate or rece " or knowingly permit any alteration to be made therein he ſh " forfeit 50*l.* And if he ſhall not convey ſuch vagrants, or " deliver them to the proper perſon; or if any conſtable ſh " refuſe to receive any ſuch perſon, or to give ſuch receipt, " ſhall forfeit 20*l.* by diſtreſs and ſale by warrant of the juſti " in ſeſſions where the offence ſhall be committed; half to " informer and half to the treaſurer, to be applied by him as p " of the public ſtock."

Vagrant to be ſet to work.

† *Sect.* 19. And it is further enacted, par. 19. " That " pariſh or place to which any rogue, vagabond, or incorrigi " rogue ſhall be conveyed ſhall employ in work, or place in ſo " work-houſe or almshouſe the perſon ſo conveyed until he ſh " betake himſelf to ſome ſervice or other employment, and if " ſhall refuſe to work, &c. the overſeers may carry him befo " ſome juſtice to be ſent to the houſe of correction to hard labou

Vide the caſe of Rex v. Ringwood. Burr. Settl. Caſes 840.

† *Sect.* 20. And it is further enacted, par. 11. " That if t " churchwarden or other perſon who ſhall receive any perſon " ſent, ſhall think the examination to be falſe he may carry t " perſon ſo ſent before a juſtice, who, if he ſee cauſe may co " mit ſuch perſon to the houſe of correction till the next ſeſſion " and the juſtices there *may* deal with ſuch a perſon as an incorr " gible rogue. But he ſhall not be removed from the place " which he is ſent, but by order of two juſtices, in the ſame ma " ner as other poor perſons are removed to the place of the " ſettlement."

Scottiſh vagrants.

† *Sect.* 21. And it is further enacted by the ſaid ſtatute, pa 13. " That the conſtable of any pariſh or place within the cou " ties of *Cumberland*, *Northumberland*, *Durham*, or the town " *Berwick* ſhall, on any perſon being ſo delivered to him by " paſs and examination, whoſe place of legal ſettlement is " *Scotland* deliver the examination to the clerk of the peace; a " convey ſuch perſon with the paſs, and deliver him to ſome co " ſtable or other officer of the next pariſh, diſtrict or place wit " in the next adjoining ſhire, ſtewartry or place, taking his r " ceipt for him; and if any ſuch vagrant, after being ſo conve " ed into Scotland ſhall be found wandering, begging or miſb " having himſelf in England he ſhall be deemed an incorrigib " rogue."

Iriſh vagrants.

† *Sect.* 22. And it is further enacted, par. 14. " Th " any maſter of a veſſel bound for Ireland, the Iſles of Ma " Jerſey, Guernſey or Scilly ſhall, on warrant to him direc " c

"ed, under the hand and ſeal, of a juſtice of the place where "ſuch veſſel ſhall lie, take on board ſuch vagrant as ſhall be "expreſſed in the warrant, and convey him to ſuch place; "and for the charges thereof the conſtable who ſerves him with "the warrant ſhall pay him ſuch rate by the head, as the "juſtices in ſeſſions ſhall appoint, and ſuch maſter ſhall on the "back of the warrant ſign a receipt for the money ſo paid, "and alſo for the vagrant ſo delivered. Which warrant ſo "indorſed ſhall be produced to the juſtice who ſigned and "ſealed the ſame, and, upon his allowance thereof, under his "hand, the money ſo paid ſhall be re-paid by the county, as "other money for conveying vagrants. And ſuch maſter ne-"glecting or refuſing to tranſport ſuch vagrants, or to indorſe "the receipt, ſhall forfeit 5*l.* to the poor of the pariſh or place "where the offence ſhall be committed, to be levied by diſ-"treſs and ſale of the ſhip or any goods within the ſame, by "warrant of one juſtice, returning the overplus on demand "after the penalty and charges of the ſame are ſatisfied. But "no maſter ſhall be compelled to take on board more than "one vagrant for every 20 tons burthen."

How ſuch vagrants ſhall be conveyed.

† *Sect.* 23. And it is further enacted, par. 20. "It ſhall "be lawful for any two juſtices where any dangerous lunatic "or mad perſon ſhall be found by warrant under their hands "and ſeals, directedto the conſtable, churchwardens and over-"ſeers of the poor of the pariſh or place, or ſome of them, "to cauſe ſuch perſon to be apprehended and kept ſafely lock-"ed up in ſome ſecure place within the county or precinct, as "ſuch juſtices ſhall under their hands and ſeals direct and ap-"point; and (if neceſſary) to be there chained, if the laſt le-"gal ſettlement of ſuch perſon ſhall be within ſuch county or "precinct; and if ſuch ſettlement ſhall not be there, then ſuch "perſon ſhall be ſent to the place of his or her laſt legal ſet-"tlement by a paſs *mutatis mutandis* as aforeſaid, and ſhall be "locked up or chained by warrant of two juſtices of the county "or precinct to which ſuch perſon is ſo ſent; and the reaſo-"nable charges of removing, and of keeping, maintaining and "curing ſuch perſons during ſuch reſtraint (which ſhall be only "during ſuch lunacy or madneſs) ſhall be ſatisfied and paid "(being firſt proved upon oath) by order of two juſtices direc-"ting the church-wardens or overſeers where any goods, chat-"tels, lands or tenements of ſuch perſon ſhall be, to ſeize and "ſell ſo much of them or receive ſo much of the annual rents of "the lands and tenements as is neceſſary to pay the ſame and to "account for what is ſo ſeized, ſold, or received to the next "quarter ſeſſions. But if ſuch perſon hath not an eſtate to pay "or ſatisfy the ſame, over and above what ſhall be ſufficient to "maintain

How lunatick vagrants may be diſpoſed of,

N. B. This act ſhall not reſtrain any former rights over the perſons of lunaticks.

" maintain his or her family, then ſuch charges ſhall be paid
" by the place to which ſuch perſon belongs by order of two
" juſtices directed to the churchwardens and overſeers."

Penalty of lodging vagrants.

† *Sect.* 24. And it is further enacted, par. 23. "That if
" any perſon ſhall knowingly permit any rogue, vagabond, or
" incorrigible rogue to lodge or take ſhelter in his houſe or
" barn or other out-houſe or building and ſhall not apprehend
" and carry him before a juſtice, or give notice to the conſta-
" ble ſo to do; and ſhall be convicted thereof by confeſſion
" or oath of one witneſs, before one juſtice, he ſhall forfeit
" not exceeding 40*s.* nor leſs than 10*s* half to the inform-
" er and half to the poor by diſtreſs and ſale; and if any
" charge ſhall be brought on any pariſh or place by means of
" ſuch offence, the ſame ſhall be anſwered to the ſaid pariſh
" or place by ſuch offender and be levied by diſtreſs and ſale
" of his goods as aforeſaid: And if ſufficient diſtreſs cannot
" be found, ſuch offender ſhall be committed to the houſe of
" correction by the juſtice, for any time not exceeding one
" month."

Children born in vagrancy.

Mr. Burn ſays the juſtice muſt make a record of the whole proceeding in order to give the ſame in evidence if the ſettlement ſhould be afterwards conteſted.

‡ *Sect.* 25. And it is further enacted, par. 25. "That
" where any woman ſhall be delivered of a child or children
" and become chargeable to the pariſh or place, the church-
" wardens or overſeers may detain her until they can ſafely
" convey her to a juſtice; who ſhall examine her and commit
" her to the houſe of correction until the next ſeſſions, who
" may order her to be publickly whipped and detained for any
" further time not exceeding ſix months, and upon applica-
" tion by the churchwardens and overſeers of the place where
" ſhe was ſo delivered, the juſtices at ſuch ſeſſions ſhall order the
" treaſurer to pay them a reaſonable ſum, for the charges
" ſuch place has been put to on her account, and if ſhe ſhall
" be detained and conveyed to a juſtice as aforeſaid; the
" child of which ſhe is delivered, if a baſtard, ſhall not be
" ſettled where ſo born, nor be ſent thither for want of other
" ſettlement, by a paſs, by virtue of this act; but the ſettle-
" ment of ſuch woman ſhall be deemed the ſettlement of ſuch
" child."

NOTE. By ſect. 22. whoever ſhall neglect his duty, or reſiſt the execution of this act ſhall forfeit not exceeding 5*l.* nor under 20*s.* By ſect. 33 the charges of apprehending, conveying, and maintaining offenders ſhall be included in the county rate. By ſect. 26. an appeal is given to the next quarter ſeſſions which ſhall be final. And by ſect. 34 the power of *ſpecial franchiſes* with regard to vagrants, is excepted from this act.

BRITISH MUSEUM 8 OCT 27

A TABL

A TABLE OF PRINCIPAL MATTERS, CONTAINED IN THE FIRST VOLUME.

Such of the Contents as have the Letter (N) *added at the End, refer to the Notes.*

ABORTION.

1 CAUSED by a potion, or by ſtriking, was anciently held to be murder. *Page* 121 ſ. 16

ABJURATION OATH.

1 The reaſons for ordaining it 96 ſ. 6
2 Who are obliged to take it. ſ. 7
3 Any two juſtices may tender the oaths ſ. 8
4 How members of univerſities ſhall take it 97 ſ. 9
5 No peer, or commoner, ſhall vote in either houſe before taking the oaths ſ. 10

ABSENCE—*Vide Church.*

1 By 1 Eliz. c. 1. whoever ſhall abſent themſelves from church on Sundays, &c. ſhall forfeit 12*d.* for every offence 19 ſ. 1
2 Expoſitions of this ſtatute *Page* 20
3 By 23 Eliz. c. 1. Abſence for a month incurs a penalty of 20*l.* ſ. 6
4 By 28 Eliz. c. 6. whoever after conviction ſhall abſent himſelf, ſhall pay 20*l.* for every month till he conform 21 ſ. 12

ABBEARANCE—*Vide Surety.*

ABBEY LANDS.

1 To moleſt any granted by Hen. 8. is *premunire* 85 (N) 1

ABDUCTION.—*Vide Marriage.*

ACCESSARY.

1 Whatever will make a man an acceſſary in felony will make him a principal in high treaſon 58 ſ. 39

2 There may be accessaries in petit treason *Page* 132 s. 5.
3 But the offence of the accessary can never be of a higher kind than that of the principal s. 6
4 In forcible marriage to receive the offender, makes the receiver an accessary after the fact. 172 s. 7
5 Clergy taken from accessaries before the fact in burglary by 3 and 4 W. and M. c. 9 165 (N)
6 In felonies by statute, accessaries shall be liable to the rules, respecting accessaries, by common law 132, 153, 164, 169
7 A wife cannot be an accessary for receiving her guilty husband 4 s. 10
8 But a husband may be an accessary by receiving his wife *ibid.*
9 In manslaughter there can be no accessaries *before the fact* 115 s. 2
10 It one advise a woman to kill her child yet unborn and she does it *in pursuance of such advice*, the adviser is an accessary in the murder 121 s. 17
11 In piracy accessaries are triable in the same manner as principals 152 s. 7
12 Who shall be deemed accessaries in piracy 156 s. 15
13 Accessaries in piracy shall be deemed principal felons 157 s. 20
14 ——— to a murder at sea may be tried within the realm 119, 120
15 There are no accessaries in petit-larceny 146 (N)
16 Clergy taken from accessaries both before and after the fact in robbery 150 (N) 5
17 Clergy taken from accessaries before in Arson 166
18 Accessaries after are still intitled *ibid.*
19 No accessaries after the fact in *Maim* 170 (N
20 Receiver's of stolen goods are made accessaries after the fact 232

ACTION ON THE CASE.

1 *Quere* if a tenant who builds a dove cote without the licence of the lord of the manor is not subject to an action on the case 362. s. 8
2 Cannot be brought for a *common* nu sance *Page* 3
3 An innkeeper is subject to it for re fusing to entertain a guest 452 s.
4 An action on the case lies in the na ture of a writ of conspiracy for a fal and malicious prosecution for a crime whether capital or not 3
5 For a libel the truth may be plead in justification 353 (N)
Vide authors, No. 7.

ACCOUNTS.—*Vide Highways Bridges,*

ACQUITTAL.—*Vide Conspiracy.*

ACCESS.—*Vide Libel. No.* 19.

ACTING PLAYS.

1 By 10 Geo. 2. c. 28. whoever shall act plays, *&c.* for hire, without li cence, or any parts thereof, not hav ing a legal settlement in the place shall be deemed a rogue and vaga bond, unless he shall forfeit 50*l.* 56
2 A copy of all dramas, or any new prologue or epilogue shall be sent to the Lord Chamberlain fourteen days before it is acted, with an account where and when it is to be acted, signed by the manager on pain of 50 s.
3 The chamberlain may prohibit the said drama, *&c.* being acted, and who ever shall offend shall forfeit 50*l.* s.
4 Whoever shall act plays in public houses shall be deemed to act for hire s.
5 How the above penalties may be re covered s.
6 How far it may be nusance. 36

ACCEPTANCE.

1 To forge any acceptance of any bill of Exchange, *&c.* is felony without clergy 211 s. 1

ACCOUNTANT GENERAL.

1 To forge the name of the accountant general in chancery, is felony without clergy *Page* 210 f. 15

ACQUITTANCE

1 To forge any acquittance is felony without clergy 210 f. 16

ACCROACHING

1 Of royal power formerly deemed high treaſon 49

ACCIDENT.

1 Homicide, by accident, where there is not the appearance of a fault may be juſtified 110 f. 27 c. 29

ADHERENCE.

1 Of treaſon in adhering to the king's enemies. 54, 55
2 Property adherent to the freehold, not the ſubject of larceny at common law 141
3 How the ſtealing ſuch property is puniſhed by ſtatute 215, 219

AD QUOD DAMNUM.

1 Is neceſſary before an ancient highway can be changed 369 f. 3
2 The effect of it as to repairs 368 (N) 369 (N) 4
3 Perſons aggrieved upon an *ad quod damnum* may appeal to the next ſeſſions on giving ten days notice, which ſhall be final 386, 387
4 It is not neceſſary for the ſheriff to give formal notice of an inquiſition upon this writ 386 (N)
5 An appeal to the ſeſſion is a waiver of any objection to the manner of executing the writ *ibid.*

ADMIRALTY.

1 The admiralty courts may take cognizance of any offences againſt 16 Rich. 2. c. 5. for purſuing queſtions touching the king in the court of Rome *Page* 80 f. 18
2 But the juriſdiction muſt appear on the face of the libel f. 19
3 All felonies, *&c.* within the admiral's juriſdiction ſhall be tried in the county by the king's commiſſion 152
4 So they may be tried either at ſea or upon land in any of the king's dominions by commiſſion directed to the admirals, *&c.* under the ſeal of the admiralty 155
5 What offenders may be tried by the admiralty 158
6 The court of admiralty ſhall be held twice a year, at the Old Bailey, and in ſuch other places as the lord high admiral ſhall direct 159
7 How the judges of the court of admiralty may proceed *ibid.* f. 24

ADVERTISING.

1. Publickly advertiſing a reward with no queſtions aſked for the return of things ſtolen or loſt, incurs a penalty of 50*l.* 237. f. 2

ADVICE.

1 It is not maintenance to give another *friendly advice* what action to bring for the recovery of a debt 537 f. 9
2 To adviſe a woman to deſtroy the child in her womb is murder if ſhe does it purſuant to ſuch adviſe. 121 f. 17
3 To adviſe a priſoner to ſtand mute is a contempt of court. 90
4 A privy council to refuſe advice is contempt of prerogative 91

ADVOWSON.

1 By 12 Ann. c. 4. Papiſts diſabled to grant any advowſon 44 f. 6
2 By 11 Geo. 2 c. 17. Every grant or deviſe of any advowſon, *&c.* by a Papiſt ſhall be void, unleſs for the benefit of a proteſtant purchaſer 45 f. 71
3 If ſuch advowſon ſhall come into the king's hands the king ſhall preſent. 46

ADULTERY.

1 How it may excuſe homicide from the guilt of murder *Page* 108 (N) 1

AFFRAYS.

1 What amounts to an affray 265 c. 63
2 It is a public offence to the terror of the people *ibid.* ſ. 1
3 Therefore an aſſault in a private place is not an affray *ibid*
4 Affrays are enquirable of at the leet as common nuſances *ibid.*
5 No quarrelſome or threatening words will amount to an affray *ibid.* ſ. 2
6 But a conſtable may carry a threatener, before a magiſtrate, to find ſureties 266
7 To ſend or to carry a challenge, or to diſperſe letters inſinuating a deſire to fight is a very high offence *ibid.* ſ. 3
8 And to challenge or to provoke another to fight on account of money won at play, incurs forfeiture of goods and impriſonment for two years *ibid.*
9 There may be an affray without actual violence, as going armed in ſuch a manner as may naturally inſpire terror *ibid.* ſ. 4.
10 How ſuch offence is prohibited by ſtatute, *(Vide "Riding armed") ibid.*
11 Magiſtrates may proceed againſt and commit offenders, either *ex officio* or by force or writ; in the firſt caſe the record muſt be certified into the exchequer; in the laſt caſe into chancery 267 ſ. 56
12 The under-ſheriff may execute the writ directed by 2 Edw. 3. if it is directed to the ſheriff ſ. 7
13 None ſhall wear armour under pretence of fear, but a man may aſſemble his neighbours for the protection of his houſe *ibid.* ſ. 8
14 Nor are private weapons, or coats of mail, within the ſtatute *ibid.* ſ. 9
15 Nor thoſe who arm themſelves to ſuppreſs dangerous rioters 268 ſ. 10
16 How far an affray may be ſuppreſſed by a private perſon *ibid.* ſ. 11
17 Any one may part people fighting, or going to fight till the heat be over, and then deliver them to the conſtable, to be taken before a magiſtrate to find ſureties *Page* 268 ſ. 11
18 If any dangerous wound enſue from ſuch affray a bye-ſtander is juſtified even in wounding the offender in order to ſecure him until the event of the wound be known ſ. 12
19 A conſtable is bound at his peril to apprehend ſuch offenders; and perſons refuſing him their aſſiſtance may be fined and impriſoned ſ. 13
20 A conſtable may impriſon perſons actually in his view engaged in an affray; even if the affray be made upon himſelf untill he can take him to a magiſtrate; but if only hot words are uſed he can only command them to avoid fighting on pain of impriſonment 289
21 And if the affray be in a houſe, or affrayers fly to a houſe, the conſtable may break open doors *ibid.* ſ. 16
22 But he is only to preſerve the peace, and not to puniſh the breach of it, *&c.* ſ. 17
23 A juſtice may iſſue his warrant to apprehend an affrayer, *&c.* ſ. 18
24 Where a dangerous wound is given a juſtice may either commit or bail the offender 270 ſ. 19
25 Affrays are, in general, puniſhable by fine and impriſonment in proportion to the heinouſneſs of the offence ſ. 20
26 As in fighting a duel, or carrying a challenge (for which one was fined 100*l*) or by attempting a reſcue; or obſtructing officers in the diſcharge of their duty; or by committing the offence in any conſecrated place ſ. 21, 22, 23
27 By 5 and 6 Edw. 6. c. 4. to quarrel, chide, or brawl in any church or church yard, incurs ſuſpenſion *ab ingreſſu eccleſiæ* in a layman, and from miniſtration or office in a clerk; for ſo long as the ordinary ſhall think fit ſ. 21
28 To ſmite or lay violent hands upon another in a church or church yard *ipſo*

ipso facto excommunicate the offender *Page* 271 ſ. 25
29 To ſtrike another with a weapon in a church or church yard, or to draw with that intent, incurs excommunication as aforeſaid, and the offender on conviction by a jury, or confeſſion on the evidence of two witneſſes ſhall have one of his ears cut off *ibid.* ſ. 26
30 And there muſt be a precedent conviction ſent to the ordinary, or the offender ſhall not be excommunicated 272 ſ. 27
31 Son aſſault demeſne is no excuſe under this ſtatute ſ. 28
32 Churchwardens, *&c.* who turn perſons from a church, *&c.* for diſturbing the congregation are not within this act ſ. 29
33 The eccleſiaſtical court may proceed upon the two firſt clauſes 272 (N)
34 But if they proceed for damages on any of the clauſes they ſhall be prohibited, *&c.* *ibid.*
35 Cathedrals and their cymetries are within the act *ibid.*
36 By 1 Mary, c. 3. to diſturb any licenſed preacher, to break any part of the church is impriſonment for three months, *&c.* 273
37 How ſuch offender ſhall be tried *ibid.*
38 To diſturb a reader of the common prayer is within the act *ibid* ſ. 31
39 By 1 W. and M. c. 18. to diſturb any *tolerated* preacher incurs a penalty of 50 *l.* on conviction before any juſtice on the oath of two witneſſes ſ. 32
40 To make an affray in any of the king's inferior courts of juſtice is highly finable 89 ſ. 10

AFFIDAVITS.—*See Perjury.*

AFFIRMATION.

1 By 8 Geo. 1. c. 6. the affirmation of quakers ſhall have all the conſequences of an oath. 333 ſ. 24

AGE.—*Vide Infancy, &c.* No. 2 to 6.

AGNUS DEI.

1 By 13 Eliz. c. v. whoever ſhall bring any into the realm *to be worn*, ſhall be guilty of *præmunire* *Page* 81 ſ. 24
2 And if a Juſtice, on information, does not diſcover the offence to a privy councillor in fifteen days he ſhall be equally guilty ſ. 25

ALLOY.

1 What portion ſhall be mixed with gold and ſilver coin 70 c. 18 (N) 1
Vide Coin. Bullion. Treaſon.

AIDING and ASSISTING.

1 Thoſe found in a ſpecial verdict to have been aiding and aſſiſting are guilty as principals 55 ſ. 26, 116, ſ. 9
2 Not within the ſtatute, ſtabbing, 1 Jac. 1. c. 8 116 ſ. 7
3 In rape, all aiders preſent are principals 170 ſ. 6

ALLEGIANCE.

1 By 13 Car. 2. c. 1. corporators muſt take the oath of allegiance, *&c.* at the ſame time when the oath of office is adminiſtered 15
2 By 1 Geo. 1. all officers civil or military ſhall take the oath of allegiance *&c.* 16
3 By 25 Car. 2. c. 2. all officers who hold places of truſt, *&c.* ſhall take the oath, *&c.* ſ. 2.
4 Allegiance is ſo inſeparable from a natural-born ſubject that he cannot by *any means* renounce it 51 ſ. 7
5 By 11 Hen. 7. c. 1. it is declared that all ſubjects are bound by *their allegiance* to ſerve the king in his wars and that none ſhall for the true duty of his allegiance be convict of any offence 52 ſ. 14

6 Therefore every king *for the time being* has a right to his people's allegiance *Page* 52 f. 15
7 A king *out of poſſeſſion* has no right to allegiance f. 16
8 The people are bound to reſiſt him *ibid.*
9 Allegiance is due before coronation f. 18
10 By 1 W. and M. c. 2 the people of England are abſolved from their allegiance to a Popiſh ſucceſſor f. 21
11 By 1 Will. and M. whoever ſhall refuſe the oaths of allegiance, &c. ſhall be committed, &c. 95 f. 4

ALE and BEER.

1 By 1 Will. 3. c. 14. no brewer or retailer ſhall uſe any molaſſes, courſe ſugar, &c. on pain of forfeiture and penalty of 100 *l.* 312 f. 77
2 By 10 and 11 Will. 3. c. 21. if they ſhall receive above the weight of ten pounds of ſuch articles into their cuſtody they ſhall forfeit 100 *l.* and the ſervant or aſſiſtant therein 20 *l.* f. 78
3 By 9 Ann. c. 12. They ſhall not uſe any broom, wormwood, &c. on pain of 20 *l.* f. 79
4 By 12 Ann. c. 2. no ſugar, honey, foreign grains, Guinea pepper, eſſentia bine, coculus Indicus, &c. ſhall be uſed on pain of 20 *l.* 513 f. 80
5 By 8 Eliz. c. 9. magiſtrates ſhall fix the price of ale and beer veſſels f. 81
6 Within the bills of mortality beer barrels ſhall contain 36 gallons and ale barrels 32 gallons, and in other places 34 gallons f. 82
7 Ale and beer ſhall be retailed by a ſtandard meaſure f. 83
8 No ale or beer exported ſhall be unladen f. 84

ALIEN.

1 Living in England owes a local allegiance 50 f. 5
2 How to be indicted for treaſon *ibid.*
3 Aliens, whether in amity or not, who invade the kingdom in a hoſtile manner ſhall be tried by martial law *Page* 50 f. 6
4 Alien friends may import victuals 480 f. 7

AMMUNITION.

1 By 22 Geo. 2 c. 33. Every perſon in the fleet who ſhall waſte or deſtroy ammunition ſhall be puniſhed by court-martial 76 f. 20

AMERCIAMENT.

1 How murder was anciently amerced 114, f. 22. 117, f. 2

AMBASSADORS.

1 How they are to be dealt with in caſes of treaſon and other capital offences 51

ANIMALS.—*Vide Larceny.* No. to 58.

ANGLESEA.

1 Salop is conſidered as the next Engliſh county 220, 221

ANNUITIES.

1 To forge any order, &c. for exchequer annuities is felony without clergy 207 f. 8
2 Or any South-ſea annuity or dividend 208 f. 11

ANCESTOR.

1 By 1 Jac. 1. c. 4. the *proteſtant* heir ſhall not be liable to penalties incurred by the *recuſancy* of the anceſtor, unleſs the king had ſeized two thirds of the lands in the anceſtor's life time 30 f. 55

2 But if the heir be alſo a recuſant the eſtate is liable to the forfeitures of the anceſtor unleſs he conform. *Page* 30 ſ. 56
3 Lands in the fee tail claimed from anceſtor are not liable *ibid.*
4 By 33 Hen. 8. c. 39. the heir is chargeable with the debts of his anceſtor, &c. *ibid.*

APPLES.

1 May be engroſſed 483 ſ. 17
2 The duty on importation 522 ſ. 121
3 By what meaſure to be ſold ſ. 120

APPROVER.

1 If any gaoler ſhall approve his priſoner he ſhall be guilty of felony 194

APPEALS.—*Vide Highways.*

1 Whoever *appeals* to Rome incurs *præmunire* 79. ſ. 15
2 Such as were formerly made to Rome ſhall now be made to chancery 80 ſ. 20
3 A defendant aggrieved for hereſy ſhould appeal to a higher eccleſiaſtical court and not to a temporal one 7 ſ. 9.
4 If a wife bring a malicious or falſe appeal ſhe ſhall be impriſoned till ſhe make fine to the king 4, 5
5 An appeal may be brought for *maiming* 176 (N)

APOTHECARY.

1 By 3 Jac. 1. c. 5. no recuſant convict ſhall uſe the trade of apothecary 29 ſ. 47
2 Exempted from ſelling ſpirituous liquors 461

APPRENTICESHIP.

1 By 5 Eliz. c. 4. no perſon ſhall exerciſe a trade nor employ any perſon therein unleſs he has ſerved ſeven years *as* an apprentice, upon pain of 40 *s.* a month *Page* 564, c. 90
2 Conſtructions upon the above ſtatute 565 (N)

ARCHBISHOP.—*Vide Henry. Biſhop.*

ARMED and DISGUISED.

1 Whoever, being armed and diſguiſed, ſhall ſteal fiſh out of a river or pond, or reſcue an offender ſhall ſuffer without clergy 222 ſ. 4
2 Or ſhall appear in any incloſed place where deer are kept—or in any high road, &c. or ſhall deſtroy any fallow deer, or rob any warren 187 ſ. 2
3 Or ſhall aſſemble to the number of three, for the purpoſe of ſmuggling 227 ſ. 1
4 In *what manner* the offenders muſt be armed 228 (N) 1

ARREST.

1 An innocent perſon *indicted* not ſubmitting to *an arreſt by warrant*, if unavoidably killed, the officer is juſtified 106 ſ. 12
2 Homicide during an affray in conſequence of *an arreſt* in a civil action may be juſtified if the officer is reſiſted 107 ſ. 17
3 How far one perſon may interpoſe to reſcue another from an arreſt, without incurring the guilt of murder if death enſue. 129 ſ. 54
4 What homicide, in endeavouring to eſcape from an arreſt ſhall be deemed murder ſ. 55

ARMS and ARMOUR.—*Vide Affrays.*

1 By 2 Edw. 3. whoever ſhall ride armed, ſhall forfeit their armour and be impriſoned 266 ſ. 4
2 The power of juſtices upon this act 267 ſ. 5
3 By 3 Jac. 1. c. 5. No popiſh recuſant convict ſhall keep arms, &c. 36 ſ. 17
4 By 31 Eliz. c. 4. whoever ſhall embezzle the king's armour to the amount

amount of 20*s.* ſhall be guilty of felony. *Page* 75 ſ. 18

ARSENALS.

1 By 12 Geo. 3. c. 24. whoever ſhall damage or deſtroy the king's arſenals ſhall ſuffer death without clergy. 75 ſ. 19

ARSON.

1 Is maliciouſly burning the houſe of *another*. 165 c. 39
2 Not only a manſion, but any houſe, with the out-buildings may be ſubjects of this offence. 166
3 So alſo barns full of corn whether adjoining the houſe or not. ſ. 1
4 And the word *domus* is ſufficient without *manſionalis*. *ibid.*
5 But burning the *frame* of a houſe or a *ſtack* of corn is not arſon. ſ. 2
6 But by 5 Eliz. c. 13. to burn corn in the four northern counties is felony without clergy. *ibid.*
7 And by 22 and 23 Car. 2. c. 7. to burn in the night corn, grain, hay or barns or other houſes is felony. *ibid.*
8 It is not arſon to burn a houſe of which a man is in poſſeſſion, or ſeized in fee, even though in a town and with intent to burn other houſes (but a pauper may be guilty of this offence for burning the publick workhouſe, &c.) ſ. 3
9 For no *intention* to do an injury is felonious. *ibid.*
10 But it may be puniſhed as a miſdemeanor. *ibid.*
11 And barely ſetting the houſe on fire, will not conſtitute this crime, unleſs it *burn*. 167 ſ. 4.
12 If a man burn the houſe of *A.* and thereby happen to burn the houſe of *B.* he may be indicted for burning the houſe of *B.* *ibid.* ſ. 5

OF MALICIOUS INCENDIARIES. *app.* 4 223

13 By 37 Hen. 8. c. 6. ſ. 4. to burn any cart loaded with fuel incurs 10*l.* and treble damages. 223 ap. 4
14 By 4 and 5 W. and M. c. 23. to burn the *covert* for red or black game within the time ſpecified, imprisonment for one month, &c. *Page* 223 ſ. 2
15 By 28 Geo. 2. c. 19. to burn the *covert* for deer or game, any ſum between 5*l.* and 40*s.* *ibid.*
16 By 1 Geo. 1. c. 48. to burn any wood or coppice is felony 224 ſ. 3
17 By 9 Geo. 1. c. 22. to burn any houſe, barn or out-houſe, or any hovel, cock, mow, or ſtack of corn, ſtraw, hay or wood, or to reſcue an offender is felony without clergy. *ibid.* ſ. 4
18 A priſon within the protection of this act. *ibid.* (N) 1
19 But a leſſee for years cannot be guilty by burning the houſe in which he is in poſſeſſion. *ibid.* (N) 1
20 How a *declaration* and an *indictment* differ, upon this act. *ibid.* (N) 2
21 By 10 Geo. 2. c. 32. to ſet fire to any coal-mine, felony without clergy. *ibid.* ſ. 5
22 By 9 Geo. 3, c. 29. to burn any mill, felony without clergy; but the proſecution muſt be within eighteen months. *ibid.* ſ. 6
23 For other offences by burning. *ibid.* (N)

ARTIFICERS.

1 The OFFENCE OF SEDUCING them. 558 c. 87
2 By 5 Geo. 1. c. 27. to ſeduce artificers in wool or metal, or any clock or watch maker into any foreign country incurs a penalty of 100*l.* and three months impriſonment. ſ. 1
3 The court can inflict but *one* penalty on *one* information, although againſt *ſeveral* offenders. *ibid.* (N)
4 Or if ſuch artificer, uſing his trade abroad, ſhall not return home on notice given him he ſhall loſe his *liberam legem*, &c. ſ. 2
5 On complaint to a juſtice that any perſon is endeavouring to ſeduce ſuch artificer, &c. he may bind him over to the quarter ſeſſions, and on conviction he

he ſhall be impriſoned till he gives ſecurity *Page* 559
6 By 23 Geo. 2. c. 13. to ſeduce any manufacturer in wool, mohair, cotton or ſilk, &c. or any artificer as above mentioned, incurs a penalty of 500*l.* and impriſonment for twelve months for the firſt offence, and 1000*l.* and two years for the ſecond f. 4
7 A coach ſpring maker is within this ſtatute f. 5
8 By 22 Geo. 3. c. 60. to ſeduce any workman in the printing callicoes, muſlins, cottons, &c. incurs the ſame puniſhment 560
9 By 25 Geo. 3. c. 67. to ſeduce any perſon employed in the iron and ſteel manufacture; or in the making of the tools and utenſils incurs the ſame puniſhment f. 7

ASSERTION.

1 To aſſert that both or either houſe of parliament have a legiſlative authority without the king is *premunire* 86
Vide Speaking.

ASSAULT and BATTERY.

1 An aſſault is an attempt, with violence, to do a corporal injury to another 263 c. 62
2 As by ſtriking at him; or pointing an offenſive weapon; holding up a fiſt, &c. or any other act done in an angry manner *ibid.* f. 1
3 But no words whatſoever can amount to an aſſault *ibid*
4 An offender may be found guilty of the aſſault and acquitted of the battery *ibid*
5 A battery is *any* injury actually done to the perſon of another; as ſpitting in his face; treading on his toes; joſtling him in a revengeful manner *ibid.* f. 2
6 Every battery includes an aſſault; therefore if the aſſault be ill laid and the battery good, it is ſufficient. *ibid.* f. 1.
7 It is no battery for an officer to lay his hand gently upon the perſon he is about to arreſt *Page* 264
8 How a battery may be juſtified *ibid.* f. 3
9 *Son aſſault demeſne* may be taken advantage of on an indictment, as well as in an action; it may be given in evidence under not guilty in the firſt and muſt be pleaded, ſpecially in the latter *ibid.*
10 How aſſaults and batteries are puniſhed 264 f. 4
11 Aſſaulting peers or members of parliamen *ibid.* f. 5
12 Aſſaulting clergymen *ibid.* f. 6
13 Aſſaulting a maſter or miſtreſs *ibid.* f 7
14 Aſſaulting a privy councillor *ibid.* f. 8
15 Aſſault for money won at play f. 9
16 Aſſaulting in the ſtreets with intent to ſpoil cloaths 265 f. 10.
17 To aſſault by ſhooting at another *ibid.* f. 11
18 Aſſaulting with intent to rob *ibid.* f. 12.
19 Aſſaulting a maſter woolcomber, &c. *ibid.* f, 13
20 To aſſault or threaten an adverſary for ſuing him, or the attorney, counſel, or jurors in the cauſe, or a gaoler for detaining a priſoner is a contempt 90 f. 14
21 A priſoner aſſaulting his gaoler may be lawfully killed by him in the affray 107 f. 13
22 In a *bare aſſault* upon a houſe, if the owner fling out his money it is no burglary 160 f. 3
23 But otherwiſe if upon the aſſault the door be opened and *he* enter the houſe 1 f. 1
24 To aſſault with intent to hinder the exportation of corn, &c. is a miſdemeanor 243

ASSEMBLY.—*Vide Riot.*

1 An unlawful aſſembly is a diſturbance of the peace by perſons barely aſſembling 297

2 An aſſembly of a man's friends for the defence of his perſon, &c. is unlawful *Page* 297
3 But ſuch an aſſembly in a man's houſe for the defence of it is lawful f. 10
4 How unlawful aſſemblies ſhall be ſuppreſſed, &c. f. 11

ASPORTAVIT,—*Vide Larceny.*

1 Is eſſential to every indictment for larceny 134 f. 2
2 What ſhall be ſaid a ſufficient *aſportation* 135. (N) 1 139 f. 18

ASSIZE.—*Vide Bread.*

ASSURANCE.

1 To forge or counterfeit the common ſeal, &c. of the London or Royal Exchange Aſſurance Offices felony without clergy 209 f. 14
2 Deſtroying a ſhip to obtain the aſſurance is felony without clergy. 185

ATTAINDER.

1 Anciently it *was thought* that any one might kill *an attainted* perſon 106 f. 8
2 But it is now determined to be murder 121 f. 15
3 An attainder in piracy corrupts not the blood 153 f. 7

ATTORNIES.

1 An attorney may proſecute or defend in the court where he is inrolled on a ſpecial retainer 542 f. 28
2 He may lay out his own money in the cauſe and maintain an action to recover it *ibid.*
3 How they may proceed in other courts *ibid.*
4 If any attorney be guilty of deceit, colluſion or impoſition he ſhall be diſqualified and impriſoned 542 f. 29
5 As where he ſues out an *habere fac. ſeiſinam* falſely reciting a recove *Page* 543 f.
6 As where he brings a *precipe* again a poor man, who had no title, in o der to get poſſeſſion f.
7 Or if he appear and confeſs judgme without warrant f.
8 Or pleads a falſe plea to impoſe the court f.

ATTEMPT to ROB.

1 By 7 Geo. 2. c. 21. whoever ſhall a fault another by menace, or in a v olent manner demand their proper with an intent to rob ſhall be tran ported for ſeven years 14
2 How the offence muſt be laid an proved *ibid.* (N)

AVOIRDUPOIS WEIGHT.—*See Bread.*

AUDITA QUERELA.

1 Conformity upon 1 Jac. 1. c. 4. is good bar on an *audita querela* againſt an informer 30 f. 5

AUTHORS.

1 By 8 Ann. c. 19. authors or their aſſigns ſhall have the ſole right of printing their works for fourteen years, &c. 476
2 A muſical compoſition is within the act *ibid.* (N)
3 So an abridgment, or an index may be within it, but *quere* as to a chart *ibid.*
4 But every volume before publication muſt be entered in Stationer's Hall, in the manner deſcribed f. 25
5 And nine copies ſhall be left there for the univerſities, &c. f. 26
6 And after the expiration of the ſaid fourteen years the right ſhall return to the authors, *if living*, for another fourteen years 477 f. 27
7 The caſe of literary property (N)

Mode of aſſigning the property ſo as to protect the contingent intereſt of authors *Page* (N) 7
By 8 Geo. 2. c. 13. the property of engravings is ſecured to their inventors for fourteen years 477 ſ. 28
But the *name* of the proprietor, and *the day of* publication muſt be engraved on the plate (N) 1
By 17 Geo. 3. c. 57 proprietors of prints may bring an action on caſe, &c. for altering, adding to, or diminiſhing the prints 478
By 15 Geo. 3. c. 53. the univerſities and colleges may print their own books, &c. at their own preſs ſ. 29

AVERMENT.—*Vide Indictment.*

B.

BACON and PORK.

Imported may be ſeized. *P.* 520 ſ. 108
At what prices they may be exported. ſ. 109
May be exported although they do not exceed the prices mentioned. ſ. 110
How they may be exported to places in amity with the crown. ſ. 111,
The duties to which they are ſubject. ſ. 112 to 114

BAIL.

A juſtice of the peace may either bail or commit one who has dangerouſly wounded another, till the year and day be paſt; but he ought to be cautious if the wound be dangerous. 270
A juſtice of the peace cannot bail in homicide *per infortunium* or *ſe defendendo*, but muſt commit till the aſſizes; but the offender may be brought up by *habeas corpus* and bailed. 114
Anciently they might have been bailed by 12 men upon the writ *de odio et atia.* ſ. 24
Whoever is bail for another may take care to have his appearance recorded without being guilty of maintenance *Page* 539 ſ. 19
By 21 Jac. 1. c. 26 to acknowledge, or procure to be acknowledged, any recognizance, bail, &c. in the name of any other perſon without their conſent, is felony 178 ſ. 9
In putting in bail before a judge, if a man *perſonate* another in one county, and the bail be filed in another, the trial ſhall be where the perſonating was committed 179
The bare perſonating or acknowledging is no felony, but a miſdemeanor, unleſs the bail be filed *ibid.*
Bail put in in *feigned names*, and no ſuch *perſons* exiſt, the offender cannot be proſecuted for *perſonating*; but he may be ſet in the pillory 179 (N) 1
By 4 & 5 W. & M. c. 4. perſonating bail, before commiſſioners authorized to take bail in actions depending in the courts at Weſtminſter, by which the perſon perſonated ſhall be made liable to pay, &c. is felony. 179 ſ. 11

BAILIFF.

Of a corporation is within 13 Car. 2. c. 1. muſt take the oaths. 15 ſ. 1
By 5 Geo. 1. c. 4. he ſhall not be preſent at any other place of worſhip than in the church in his *official* habit, &c. 17 ſ. 5
By 8 Hen. 6. c. 9. bailiffs of a franchiſe, not returning the king's writ upon forcible entry, ſhall forfeit 20*l.* 277 ſ. 11

BAILMENT.

Bailment of goods to another for a ſpecial purpoſe gives *the bailee* ſuch a *poſſeſſion* of them that he cannot be guilty of felony in ſtealing them while the *poſſeſſion* continues 134 ſ. 3
But if *the bailee* take away *part* of what is bailed to him, he may be guilty of felony, for his poſſeſſion was of *the whole*, as one entire thing, and not of any diſtinct and ſeperate part 135
The *bailment* alſo muſt be fairly and honeſtly obtained; for if it appears to

to have been acquired with a felonious intention at the time in ſuch caſe although the owner *actually* delivered the goods, yet *conſtructively* he ſtill retained the poſſeſſion of them *Page* 135, 137

4 But if the *bailment* be originally fair and *bona fide*. and the felonious deſign is hatched in the mind of the bailee ſubſequent to the delivery of the goods he is not guilty of larceny. but of a bare breach of truſt, by taking them away. *ibid.*

5 If a perſon has only the bare charge of goods, or the ſpecial uſe of them, as a ſhepherd of ſheep, a butler of plate, &c. this is not a *bailment*, which changes the *poſſeſſion* of the owner. 136 ſ. 6

6 The *poſſeſſion* and the *property* are both delivered to the bailee by a proper *bailment*; but when the purpoſes of the *bailment* are performed, the bailee is diveſted of the *poſſeſſion*; and if he then take away the *property*, feloniouſly, it is larceny ſ. 7.

7 A *bailer* may be guilty of felony in taking his own goods from his *bailee* 145 ſ. 30

BAKERS.—*Vide Bread.*

1. By 2 & 3 Ed. 6. c. 15. bakers are puniſhable for conſpiring to raiſe the price of victuals. 481 ſ. 10

2 May bake victuals for dinner for their cuſtomers on a Sunday 11.

3 But they cannot bake loaves of bread or rolls in the uſual way of their trade *ibid.*

BALLAST.

1 By 19 Geo. 2. c. 22. the ballaſt of ſhips not to be caſt out in the harbour 200 (N)

2 Having it on the Thames, a penalty in lieu of tranſportation 248

BANKS.

1 By 6 Geo. c. 16. whoever ſhall deſtroy banks, as fences, to certain woods, &c. ſhall be puniſhed as rected by 6 Geo. 1. c. 4. *Page*

2 By 22 Hen. 8, c. 11. to deſtroy c tain banks in Norfolk is felony.

3 By 10 Geo. 2. c, 32. to cut off, dr up, or remove any piles, &c. ſecuring banks made to prevent adjoining lands from being overflow incurs a penalty of 20*l*. 199

4 All the proviſions of the *black* ſhall extend to offences againſt a bank, or banks of rivers, or ſ banks, &c.

5 By 6 Geo. 1. c. 2. whoever ſhall c down the banks of any river or a ſea bank whereby the lands ſhall overflowed ſhall be guilty of felo without clergy. ſ.

6 By 27 Geo. 2. c. 19. whoever ſha deſtroy any bank, &c. for benefitin Bedford level ſhall ſuffer death wit out clergy ſ.

7 By 4 Geo. 3. c. 12. whoever ſha deſtroy any banks to any navigatio erected by parliament ſo as to im pede the ſame may be tranſporte for ſeven years ſ.

8 For breaking the banks or dams private fiſheries. *ibid Not*

9 By 15 and 16 Geo. 2. c. 33. to de ſtroy ſtar or bent, planted to pre ſerve ſea banks

BANK OF ENGLAND.

1 By 15 Geo. 2. c. 13. if *any officer* of the bank entruſted with any of the effect of the company, or the effects of any other perſon therein depoſited, ſhall ſecrete, embezzil, or run away with the ſame or any part thereof, he ſhall be guilty of felony without clergy 139

2 By 8 and 9 Will. 3. c. 20. to forge the ſeal of *the bank* or any note ſigned by *the bank*—felony without clergy 205

3 By 11 Geo. 1. c. 9. whoever ſhall forge, alter, eraſe, utter, or exchange any bank note, ſhall ſuffer as in caſes of felony *ibid.*

4 By 12 Geo. 1. c. 32. to forge the name of any of the caſhiers of the bank

bank is felony without clergy. *Page* 205 ſ. 3
By 15 Geo. 2. c. 13. to alter any note or obligation under the ſeal of the bank, or to demand the money for the ſame, &c. felony without clergy ſ. 4
By 13 Geo. 3. c. 79. to make or cauſe to be made or to have unlawfully the poſſeſſion of any frame, &c. for making paper, with the words, *Bank of England* viſible in the ſubſtance; or to make any *ſuch paper*, or to cauſe, by any act, the words *Bank of England* to appear in any paper is felony without clergy 296
And whoever ſhall engrave, &c. upon any plate, &c. any note or bill, or any part thereof, containing the words BANK OF ENGLAND or BANK POST BILL, or any words expreſſing the ſum, &c. of ſuch note *in white letters or figures on a black ground*; or ſhall uſe ſuch plate, &c. or have the ſame in their cuſtody; or ſhall utter ſuch note, ſhall be committed to goal for ſix months ſ. 6

BANKRUPTS.

1 Who ſhall not within forty two days after notice of the commiſſion, ſurrender to the commiſſioners, and ſubmit to be examined, upon oath, and diſcloſe their whole eſtate and effects, and deliver up all their books and papers: or who ſhall embezzle to the amount of 20*l.* are guilty of felony without clergy 203
2 But the ſtatute muſt be ſtrictly purſued in the commiſſioners commitment; and a court of equity will not aſſiſt a proſecution for this offence by ordering the officer to attend with the papers, &c. *ibid.* (N) 2
3 But the chancellor may enlarge the time not to exceed fifty days from the end of the forty two days 204
4 Any truſtee or other perſon who ſhall conceal the effects of a bankrupt ſhall forfeit 100*l.* *ibid.* ſ. 3
5 A bankrupt may be apprehended if he is *likely* to abſcond *ibid.* (N) 1

BANNS—*Vide Marriage.*

BAPTISM.

1 By 3 Jac. 1. c. 5. Popiſh recuſants neglecting to baptize their children within one month after their birth by a lawful miniſter, &c. forfeit 100*l.* *Page* 37 ſ. 22.
2 Diſſenters need not ſubſcribe to thoſe of the 39 articles concerning infant baptiſm 17 ſ. 2

BARGAINOR.

1 By 8 Geo. 2. c. 6. to forge any entry of the acknowledgment, in bargain and ſale in the county of York, by which any freehold ſhall be affected incurs the penalties of 5 Eliz. 211 ſ. 19

BARONS

1 Of the exchequer *as ſuch* are not within the ſtatute of treaſons 61 (N) 12

BARK.—*Vide Trees. Freehold.*

BARRATRY.

1 A barrator is a common mover or maintainer of ſuits 524 c. 8
2 Every thing whereby diſquiet may grow among neighbours is barratry 525 ſ. 2
3 But no number of falſe actions brought by a man in his own right will make him a barrator ſ. 3
4 Nor can any attorney be a barrator for maintaining a groundleſs action ſ. 4
5 There muſt be more than *one act* for the charge is *communis barractator* ſ. 5
6 *Quere* if a *feme covert* can be guilty of this offence ſ. 6
7 By 34 Edw. 3. c. 1. juſtices of the peace may hear and puniſh this offence ſ. 7, 8

8 No indictment good without the words *communis barractator* *Page* 526 ſ. 9
9 But *contra formam ſtatuti* will not vitiate an indictment for barratry, although the ſtatute only goes to the puniſhment ſ. 10
10 It need not be charged to be done at any particular place ſ. 11
11 But it muſt conclude *contra pacem* ſ. 12
12 The parties muſt interchange a note of the particular matters to be given in evidence ſ. 13
13 The puniſhment of this offence ſ 14

BARRISTERS.—*Vide Counſellors.*

1 Shall take the oaths, &c. in open court, before they ſhall be admitted to the vocation 81 ſ. 27
2 By 7 Will. 3. c. 24. barriſters practiſing as ſuch in any court whatſoever, without taking the oaths, &c. and ſubſcribing the declaration incur a *premunire.* 84 ſ. 43
3 By 13 Will. 3. c. 6. and 1 Geo. 1. c. 13. every perſon who ſhall act as barriſter, &c. in any courts in England ſhall, within three months, &c. ſubſcribe the oaths at Weſtminſter, or at the general ſeſſions of the peace where they reſide, or they ſhall *ipſo facto* be rendered incapable of the ſaid office, and *on conviction*, ſhall be diſabled to ſue, &c. or to vote, &c. and forfeit 500*l.* 97
4 By St. Weſt. 2. c. 49. none of the king's council, &c. ſhall receive any freehold while the thing is in plea 546 ſ. 11
5 A barriſter receiving part of land *for his wages*, after the ſuit is determined is not within 28 Edw. 1. c. 11. againſt champerty 548 ſ. 20
6 A barriſter cannot juſtify indirect practices to influence a jury 549 ſ 5
7 A counſel, *having received his fee*, may lawfully ſet forth his client's cauſe to the beſt advantage, but he cannot give him money to maintain his ſuit 542 ſ. 27
8 Barriſters are liable to puniſhment for any deceitful practice ſ. 29
9 By St. Weſt. 1. c. 29. if they *be* the court or the party, they ſha *diſbarred* and impriſoned, &c. *Page* ſ
10 And counſellors not ſworn ar much within this act as ſerjeants,

BARON AND FEME.——*Vide Covert.*

BASE MONEY.

1 If the king's miniſters make mo of baſer alloy than they ought, t and their receivers and comfor are within the ſtatute of treaſons ſ.
2 To utter baſe money knowingly high miſpriſion at common law ſ.
3 By 8 and 9 W. 3. c. 26. whoever ſh make baſe coin reſemble the curr money of England, or ſhall waſh colour, &c. any round blanks of b metal for that purpoſe, their aide &c. are guilty of high treaſon.
4 By 1 and 2 P. and M. c. 11. to i port baſe foreign coin current here high treaſon 65 ſ.
5 The perſon importing muſt know to be falſe ſ.
6 If *baſe money* be found on a ſuſpicio perſon he may be arreſted 66 ſ. *Vide Coin.*

BASTARD.

1 By 21 Jac. 1. c. 27. if a woman delivered of a baſtard child, and pr vately endeavour to conceal the dea of it ſo as to prevent it being know whether it be born alive or not, ex cept the mother can prove, by on witneſs, that ſuch child was bor dead ſhe ſhall ſuffer as in caſe murder 121 ſ. 1
2 No baſtard children born in vagran cy, ſhall gain a ſettlement by birth or be ſent to the place where born for want of other ſettlement; but th ſettlement of the mother ſhall be th ſettlement of ſuch child 576 ſ. 2

BATTERY.—*Vide Aſſault.*

1 Every battery includes an aſſault *Page* 263 ſ. 1
2 If the aſſault be ill laid the defendant may be found guilty of the battery. *ibid.*
3 A battery is any injury, however ſmall, done to *the perſon* of another ſ. 2
4 But one may juſtify *laying his hands gently on another* for a lawful purpoſe 264
5 How battery may be juſtified and puniſhed ſ. 3, 4.
6 Surety of the peace may be required for a threatened battery 254. ſ. 7

BAWDY HOUSE.

1 An inſurrection to deſtroy *all* bawdy houſes is high treaſon, from the *generality* of the intention. 54 ſ. 25
2 The offence of keeping a bawdy houſe is a common nuſance 357 c. 74
3 A *feme covert* is puniſhable with her huſband for this offence, or without him, if he does not live with her 4 ſ. 12(N)41
4 A lodger who keeps only a ſingle room for this purpoſe is indictable as the keeper of a bawdy houſe 357
5 This offence is liable to fine, impriſonment and ſuch *infamous* puniſhment as the court ſhall think fit *ibid.*
6 But the bare ſolicitation of chaſtity is not indictable *ibid.*
7 A man may be bound to his good behaviour for haunting bawdy houſes with women of bad fame. 261 ſ. 2
8 How offenders may be apprehended and proſecutions carried on 358. ſ. 5

BEACH.—*Vide Trees.*

BEARS.

1 Bears, or other things of a baſe nature, are not ſo regarded by the law, that a man ſhould die for their ſakes, and therefore cannot be the ſubject of larceny. *Page* 143 ſ. 23

BEASTS.

1 The felonious taking of domeſtick beaſts, as horſes. mares, colts, &c. or any creatures *domitæ naturæ* as poultry, &c. may be the ſubject of larceny. 144 ſ. 28
2 But animals of a baſe nature as dogs, bears, foxes, &c. or any animals *ferœ naturæ* and unreclaimed, cannot be the ſubject of larceny. 143

BEER.—*Vide Ale. Brewer.*

BEHAVIOUR.

1 A juſtice of the peace may commit one guilty of a forcible entry if he refuſe to give ſurety for his good behaviour 276
2 The author of an obſcene writing may be bound to his good behaviour as a perſon of evil fame. 355 ſ. 9
3 By 34 Ed. 3. c. 1. juſtices of peace are required to take of all them that be not of good fame, ſufficient ſurety for their good behaviour 261
4 But this means of ſuch only as intend to break the peace ſ. 2
5 Or thoſe who by quarrelſome behaviour give juſt ſuſpicion of their readineſs to break the peace *ibid.*
6 As for offences *contra bonos mores*, as frequenting bawdy houſes, ſpeaking contemptuouſly of a magiſtrate though not in the execution of his office; or of a conſtable or other inferior officer in the diſcharge of his duty *ibid.*
7 But this ſurety cannot be required for barely calling another names ſ. 3
8 This power in the magiſtrate is diſcretionary and he may take the ſurety of all whoſe behaviour involves them in the deſcription of perſons of *evil fame* 262 ſ. 4
9 But if he commit for want of ſurety he muſt ſhew the cauſe with convenient certainty. *ibid*

10 Inſtances in which this ſurety has been taken. *Page* 262 (N) 1
11 A recognizance for ſuch ſurety may be forfeited by a commiſſion of the offence intended to be prevented by it. ſ. 5.
Vide Contempts, No. 16. 20.—*Conſpiracy, No.* 20.

BEGGARS.

1 Soldiers or ſailors wandering as beggars without a teſtimonial from a juſtice ſhall be guilty of felony without clergy. 183 c, 48
2 Beggars pretending to be ſoldiers or ſailors ſhall be deemed rogues and vagabonds 184 ſ. 6
3 All perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg or gather alms in the pariſhes or places where they dwell are to be deemed idle and diſorderly perſons 5
4 One juſtice may, on conviction by one witneſs, &c. &c. commit ſuch offender to hard labour for a month. *ibid.*
5 Any perſon may apprehend *ſuch beggars* and carry them before a juſtice, if they reſiſt or eſcape, they ſhall be puniſhed as rogues and vagabonds *ib*
6 The juſtice may order the overſeer of the pariſh to give the perſon apprehending ſuch beggar a reward of 5 *s.* *Vide Vagrants.* *Ibid.*

BELL METAL.—*Vide Stolen Goods.*

BENEFIT OF CLERGY. *Vide Felonies.*

BENT.

1 By 15 and 16 Geo. 2. c. 30. whoever ſhall deſtroy bent on the ſea coaſts ſhall forfeit 20 *s.* *ibid.*

BIGAMY.

1 By 1 Jac. 1. c. 11. if any married perſon, ſhall marry another perſon, the former huſband or wife being alive, ſhall be guilty of felony 174
2 The offenders may be tried in county where they are apprehend but it is no felony *Page*
3 If the huſband or wife ſhall continually remaining beyond ſea by the ſpace of ſeven years gether.
4 Or ſhall be abſent the one from other for the ſpace of ſeven ye within the kingdom, the one knowing the other to be alive wi in that time. *i*
5 Or if either of them ſhall be vorced or the marriage decla void by the ſpiritual court at time of the ſecond marriage.
6 Or if either of the parties within the age of conſent. *i*
7 But this offence ſhall not incur tainder, corruption of blood, loſ dower, or diſheriſon
8 A divorce, *a vinculo matrimonii*, a alſo *a menſa et thoro cauſa adult or ſævitiæ* is within the exceptio this ſtatute.
9 Where one of the parties is within age of conſent, the other is there alſo exempted from the felony.
10 If the firſt marriage be beyond ſ and the latter in England, the pa may be indicted for it in England
11 And *quere* if he may not though t firſt marriage be in England, and t ſecond beyond ſea
12 The firſt and true wife is not admiſſable evidence againſt her hu band 175(N
13 She cannot even make an affida to poſtpone the trial *ib*
14 But the ſecond *woman* is a comp tent witneſs. *ib*
15 A ſecond huſband, without privi of the firſt marriage, is intitled to t profits of the *woman's* induſtry *ib*
16 The production of the ſentence i ſuit for jactitation does not preclu the proof of the marriage (N
17 If ſuch a ſentence were concluſi evidence againſt the fact of mar age, yet it may be impeached fraud or colluſion. *ib*

Vide Marriage.

BILLS.—*Vide Forgery, Choſes in Action.*

1 By 2 Geo. 2. c. 25. it is felony without clergy to forge, or cauſe to be forged, or to aſſiſt in forging, any bill of exchange or promiſſory note for the payment of money, or any indorſement thereon. *Page* 210 ſ. 16
2 And by 7 Geo. 2. c. 22. to forge, &c. any acceptance, or number, or principal ſum thereon. 241 ſ. 18
3 So alſo by 31 Geo. 2. c. 10. to forge, &c. any bill to receive the monies due to any ſeaman, &c. 212 ſ. 21
4 Or by 9 Geo. 3. c. 30. knowingly to utter the ſame. *ibid.*

BILLS OF MORTALITY.—*Vide page* 233. *Chairman. Cattle No.* 8. 21. *Bread.*

BILLINGSGATE.—*Vide Nuiſances.*

BIRCH.—*Vide Trees.*

BISHOP.—*Vide Præmunire. Popery.*

1 Every biſhop may convict for hereſy within his own dioceſe, and proceed to puniſh by church cenſures. 6 ſ. 4
2 But no *other* ſpiritual judge can. *ib.*
3 By 24 Hen. 8. c. 9. the archbiſhop of either province may cite the offender, if the immediate ordinary conſents, or if he neglects his duty. ſ. 5
4 By 11 and 12 Will. 3. c. 4. whoever ſhall convict a *popiſh biſhop* of ſaying maſs, ſhall receive 100*l.* and the offender be condemned to perpetual impriſonment.—But this is repealed by 18 Geo. 3. c. 60. provided the offender ſhall have taken the oath therein preſcribed before any proſecution commenced. 39 ſ. 2

BITCH.—*Vide Dog.*

BLACK ACT.

1 By 9 Geo. 1. c. 22. it is felony without clergy *to appear*, ARMED AND DISGUISED in any incloſed grounds where deer, hares, or conies are uſually kept. *Page* 187
2 Or in any high road, open heath, common, or down. 187 ſ. 2
3 Or to hunt, wound, deſtroy or ſteal any fallow deer. *ibid.*
4 Or to rob any warren where hares or conies are uſually kept. *ibid.*
5 Or to ſteal or take away any fiſh out of any river or pond. 222 ſ. 4
6 It is alſo felony without clergy, *whether armed and diſguiſed or not* to hunt, wound, deſtroy or ſteal any fallow deer in any of the king's incloſed parks or foreſts. (*Sed Vide* 16 *Geo.* 3. c. 30. *p.* 189.) 187
7 Or to break down the head of any fiſh-pond whereby the fiſh ſhall be loſt or deſtroyed. 212 ſ. 4
8 Or to kill, maim, or wound any cattle. 180 ſ. 2
9 Or to cut down or deſtroy any trees planted in any avenue or growing in any garden, orchard, or plantation, for ornament, ſhelter or profit. 215 ſ. 4.
10 Or to ſet fire to any houſe, barn, out-houſe, or to any hovel, cock, mew, a ſtack of corn, ſtraw, hay, or wood. 224 ſ. 4
11 Or to maliciouſly ſhoot at any perſon in any dwelling-houſe or other place. 225
12 Or to ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name demanding money, veniſon, or other valuable thing. 226 ſ. 3
13 Or to forcibly reſcue any perſon, in cuſtody for any of the above offences. 224 ſ. 4
14 Or to procure, by gift or promiſe of reward, any perſon to join in committing any ſuch unlawful act. *ibid.*
15 Any two juſtices may receive information on the oath and ſubſcription of one witneſs, which they ſhall tranſmit to a ſecretary of ſtate, who

is to lay the ſame before the king and council, where an order may be made for *the offender to ſurrender* himſelf. after proclamation at two market towns, at the time and in the manner directed by the act; and if he neglect to ſurrender he ſhall be deemed convicted of felony without clergy; and the king's bench or gaol delivery, on production of the order of council, may award execution againſt the offender. *Page* 187 ſ. 88

16 And whoever ſhall *abet* an offender after the time limited for his ſurrender is expired, ſhall, *on conviction*, be guilty of felony without clergy. 188 ſ. 4

17 But the ſurrender clauſe ſhall not ſuperſede the power of magiſtrates to apprehend the offender by the ordinary proceſs of law. 185 ſ. 5

18 But if he is apprehended by the ordinary proceſs, it ſhall *avert* the conſequences of the ſurrender clauſe, and the offender ſhall be tried by the common law.

19 The hundred is made liable to the extent of 200*l.* for the offences mentioned, No. 8, 9. 10.

20 But the perſons injured muſt give notice to ſome of the inhabitants, within two days after the offence is committed and be examined within four days, after touching their knowledge of the offence.

21 The action to be within one year; and if the offender be convicted within ſix months after the offence, the hundred is exonerated.

22 Juſtices may iſſue their warrants to ſearch for ſtolen veniſon.

23 Perſons wounded, or if killed, their executors, &c. are intitled to 50*l.* for apprehending and convicting an offender.

24 This act to be openly read at the quarter ſeſſions, &c.

N. B. For the clauſes not referred to the book for, vide the act.

BLACK LEAD.

1 By 25 Geo. 2. c. 10. to enter a black lead mine by force, and take away wad, cawke, or lead, &c. their aiders and abettors ſhall be tranſported for ſeven years, or whipped. *P.* 2 ſ. 1

BLASPHEMY.

1 All blaſphemies againſt God, or contumelious reproaches of our Saviour are offences at common law, puniſhable by the temporal judges with fine, impriſonment, and infamy. 10 ſ. *Vide Religion.*

BLOOD.—*Vide Corruption of Blood.*

BLACK MAIL.

1 By 43 Eliz. c. 13. whoever inhabiting near the borders of Cumberland, Weſtmoreland or Durham, ſhall take any perſons or goods and impriſon them till ranſom made, &c. &c. ſhall ſuffer death without clergy. 2

BLUDGEON.—*Vide Vagrant.*

1 By 23 Geo. 3. c. 88. a perſon apprehended with a bludgeon or other offenſive weapon upon him, with intent feloniouſly to aſſault another, ſhall be deemed a rogue and vagabond. 1

BOATS.

1 By 10 Geo. 2. c. 31. no perſon ſhall carry in a *tilt boat*, &c. more than 37 paſſengers and 3 by the way. Nor in any *other boat*, more than 8 paſſengers and two by the way. Nor on Sunday more than 8 perſons over the ferry. 5

2 And if any greater number ſhall be taken, and any paſſenger in a boat *ſo ſurcharged* ſhall be drowned, the navigator of the boat ſhall be *tranſported as a felon.* 5

3 No perſon ſhall uſe any boat or barge on a Sunday without the allowance

of ſome juſtice of peace, on pain of 5l. *Page* 11 ſ. 3
4 But 40 watermen may be appointed by the watermens Company to ferry boats over the Thames on a Sunday. 12

Vide 2 Geo. 3. c. 28. *for thefts by bum boats on the Thames.*

BOND.—*Vide Uſury, Extortion.*

1 Stealing *an obligation* is not within 21 Hen. 8. c. 7. 139. ſ. 14.
2 Nor is the ſtealing a bond, felony by the common law. ſ. 22
3 But by 2 Geo. 2. c. 25. the ſtealing of bonds and certain other choſes in action, is made ſuch felony as ſtealing the property they ſecure would be. 142
4 Thoſe who have an equitable intereſt in a bond, may obtain another for the recovery of it. 539 ſ. 17
5 A bond is within 29 Eliz. c. 6. which authorizes the king to take the goods of a perſon abſenting himſelf from church on default of paying the 20l. a month. 22 ſ. 14
6 By 9 Ann. c. 27. to forge South Sea bonds is felony without clergy. 208 ſ. 11
7 By 7 & 8 Will. 3. bonds given to procure the return of a member to parliament, are void; and the giver thereof ſhall forfeit 300 *l.* 314 ſ. 8
8 A bond, by a deputy to pay a certain ſum at all events, is bribery, and void. 313
9 But not a bond to pay half the profits, or a certain ſum out of the profits of the office for a deputation. ſ. 5
10 The *obligee* may raſe out *libris* and inſert *marcis*, without being guilty of forgery. 337 ſ. 4
11 By 2 Geo. 2. c. 25. to forge any bond or writing obligatory is felony without clergy. 210 ſ. 16
12 To make a bond for 500*l.* ſeem to be a bond for 5000*l.* by adding another cypher was forgery at common law. 336 ſ. 2
13 But forging a bond containing a mere gift of perſonal chatels is not within 5 Eliz. 342 ſ 21

BONA.

1 *Bona capellæ* is a good deſcription in an indictment for ſtealing the goods of a chapel; *bona domus et eccleſiæ* for ſtealing the goods of an abbey; *bona parochianorum* for ſtealing the goods of a pariſh church. *Page* 144

Vide goods and chattles. Indictment. Reſtitution.

BOOKS.

1 By 3 Jac. 1. c. 5. no perſon ſhall import, print, buy, or ſell any Popiſh books on penalty of 40*s.* for every book, and the books to be burnt. 46 ſ. 15
2 The 8 Ann. c. 19. made to encourage the writing of uſeful books. 475 ſ. 24
3 The author of any book or his aſſigns, ſhall have the excluſive copy-right for 14 years, to commence from the day of publication; and whoever ſhall invade that right ſhall forfeit all the impreſſions and one penny for every ſheet found in his cuſtody. 476
4 A muſical compoſition is *a book* within the meaning of this act. *ibid.* [N]
5 But the author may conſent, by writing in the preſence of two witneſſes, that another ſhall print ſuch books. *ibid.*
6 But this act ſhall not extend to any book or books printed without ſuch conſent, unleſs the title to the copy of the whole of ſuch books be regiſtered at Stationers hall. 476 ſ. 25
7 Directions how the ſame ſhall be regiſtered, if the clerk of the company refuſe to regiſter, he ſhall forfeit 20*l.* and the author, on publiſhing the ſame in the gazette ſhall have the ſame benefit as if the work had been regiſtered. *ibid.*
8 Nine copies of all books ſo regiſtered ſhall be left at Stationer's-hall for the uſe of the Univerſities, &c. ſ. 26
9 After the firſt 14 years the copy-right ſhall return to the authors, if living, for another 14 years. ſ. 27

10 The caſe of literary property; and the mode of aſſigning copy-right ſo as to protect the contingent intereſt of authors. *Page* 476 (N) 7
11 By 15 Geo. 3. c. 53. the Univerſities of Great Britain; and Eaton, Weſtminſter, and Wincheſter, ſhall have *for ever* the excluſive right of printing *at their own preſs*, their *own* books. 478 ſ. 29
12 But they may ſell the copy-right in like manner as any author. *ibid.*
13 The king may grant the excluſive right of printing the ſcriptures and law books. 471 ſ. 6

BORDERERS.—*Vide Black Mail.*

1 For the offences of black mail. And of moſs troops, &c. Vide 200 to 202

BRAWLING.—*Vide Affrays.*

1 A *feme covert* may be indicted as *communis rixatrix*. 5 (N) 11
2 By 5 and 6 Edw. 6. c. 4. whoever ſhall *brawl*, &c. in a church or church-yard, the ordinary, on proof by two witneſſes may ſuſpend a layman *ab ingreſſu eccleſiæ*, and a clerk from *miniſtration*. 271 ſ. 24
3 This is a diſtinct and ſubſtantive offence; in the puniſhment of which the ſpiritual court ſhall not be prohibited except they proceed to damages. 272 (N)
4 Cathedrals and their burying places are within this ſtatute. *ibid.*

BREAD.

1 In ſetting the aſſize, reſpect ſhall be had to the price of grain, &c. in the public markets. 486
2 Where there is an aſſize, only wheaten and houſehold bread, or ſuch bread as ſhall be allowed, ſhall be ſold. 487
3 The aſſize and price of bread ſhall be according to the tables. *ibid.* ſ. 7
4 Explanation of the tables. 487 to 490
5 The aſſize to be in avoirdupoize weight. 491
6 A return to be made weekly to the court of aldermen of London of the prices of grain, &c. in the London markets, to be entered in a book for the inſpection of the bakers. *Page* 491 ſ. 1
7 And the aſſize ſhall be ſet the next day by the ſaid court, if ſitting; if not by the lord mayor. *ibid.*
8 The meal-weighers ſhall leave a copy of the returns at Bakers Hall. *ibid.*
9 The ſame power, &c. given to the court of aldermen of every other city, who ſhall cauſe the prices of grain, &c. to be returned and *within two days* ſhall ſet an aſſize to continue in force *for ſeven days*. 49
10 In counties, two juſtices are authorized to ſet an aſſize, &c. ſ. 1
11 Bakers may inſpect the returns of the prices of grain in order to enable them to object to the aſſize. ſ. 1
12 No baker ſhall pay any fee for an aſſize. ſ. 1
13 Half peck and quartern loaves of wheaten and houſehold, to weigh in proportion to the peck loaf, &c. 493 ſ. 1
14 Where ſmaller loaves ſhall be allowed, no peck, half peck or quartern loaves ſhall be ſold. ſ. 1
15 The ſeſſions may fix the juriſdiction of any place within their diſtrict. ſ. 1
16 An entry of the prices of grain, &c. to be made by every clerk of the market. ſ. 1
17 But no alteration ſhall be made in the price of bread unleſs the price of grain ſhall vary 3*d.* per buſhel from the laſt ration. 494 ſ. 1
18 Forfeiture on every meal weigher who ſhall neglect his duty, and on every officer who ſhall diſobey. ſ. 2
19 Penalty for refuſing to diſcloſe the true price of grain, or for giving in a falſe price. ſ. 2
20 If a falſe return or price ſhall be ſuſpected, the magiſtrates may examine the party and fine him 10 49
21 But the party ſummoned ſhall not be obliged to travel above five miles from his place of abode. *ibid.*

22 Bakers ſhall make the bread of ſuch weight, goodneſs. and price as ſhall be directed on pain of 40*s*. *P.* 495 ſ. 23
23 Penalty for adulterating bread. ſ. 24
24 Penalty for adulterating corn. ſ. 25
25 Penalty where the bread ſhall be of a different mixture of corn than what it imports, ſ. 26
26 Penalty for making bread under weight. ſ. 27
27 Every loaf of wheaten bread to be marked W. and every loaf of houſehold H. 497
28 Bakers taking higher than the fixed price, or refuſing to ſell their bread forfeit between 10*l*. and 40*s*. ſ. 29
29 Bread inferior to wheaten not to be higher than houſehold. ſ. 30
30 Any magiſtrate, or peace officer by warrant, may ſearch the houſes of bakers, for bread wanting weight, or adulterated, &c. or not truly marked, and ſeize the ſame. ſ. 31
31 How adulterated meal or flour, &c. may be ſearched for and ſeized ſ. 32
32 The offender ſhall forfeit not exceeding 10*l*. nor leſs than 40*s*. ſ. 33
33 And the magiſtrate may cauſe the offender's name to be publiſhed. ſ. 33
34 Whoever ſhall oppoſe or hinder ſuch ſearch ſhall forfeit not exceeding 5*l*. nor leſs than 20*s*. 499 ſ. 34
35 But no miller, mealman, or baker ſhall act as a magiſtrate under pain of 50*l*. ſ. 35
36 How maſters may be recompenſed who pay penalties for the default of their ſervants. ſ. 36
37 Offences may be heard and determined in a ſummary way, &c. ſ. 37
38 How the penalties ſhall be applied 500 ſ. 38
39 Magiſtrates authorized to ſummon witneſſes, &c. ſ. 39
40 No *certiorari* to be allowed 501 ſ. 40
41 The manner in which perſons aggrieved may appeal to the ſeſſions. *ibid.* ſ. 41
42 If the conviction be within ſix days of the ſeſſions, the party grieved may appeal to the ſubſequent ſeſſions. ſ. 42
43 Limitation of actions. ſ. 43, 47
44 By 3 Geo. 3. c. 11. although no aſſize be ſet, no loaf ſuch as aſſized and priced loaves are ordered to be by the tables, ſhall be made at the ſame time and in the ſame place. *Page* 501 ſ. 48
45 But the ſeſſions may order the ſort of bread which ſhall be made. ſ. 49
46 The ſorts of aſſized wheaten bread ſ. 50
47 Proportion as to weight between the white and wheaten bread and the wheaten and houſehold aſſize bread. ſ. 51
48 The price of the peck loaf, and half peck, and other ſubdiviſions in the wheaten and in the houſehold bread. ſ. 52
49 Every peck loaf ſhall weigh 17 lb. 6 oz. every half peck 8 lb. 11 oz. every quarter peck, 4 lb. 5½. oz. every half quarter peck 2 lb. 2¾ oz. ſ. 32
50 And offenders ſhall forfeit not exceeding 5s. nor leſs than 1s. for every ounce wanting, and for leſs than one ounce not exceeding 2 s. 6 d. nor leſs than 6 d. 505
51 But ſuch deficient bread muſt in the bills of mortality be weighed within 24 hours before ſome juſtice, and elſewhere within three days. *ibid.*
52 No wheaten bread of a higher price than houſehold bread to be ſold on pain of 20s. ſ. 54
53 To be marked as before. *Vide* ſ. 55 *No.* 27. ſ. 55
54 Bread made of any other grain than wheat to be impreſſed with ſuch letters as the juſtice ſhall order, &c. ſ. 56
55 Juſtices or peace officers may ſearch, &c. *Vide No.* 30, 43. ſ. 57, 63
56 By 13 Geo. 3. c. 62. A STANDARD WHEATEN BREAD ſhall be made. 507. ſ. 64
57 Which ſhall not be ſold as *prized* loaves together with *aſſized* loaves. 508
58 The *aſſize* table for ſuch bread. 509
59 The price table for the ſame. 510
60 Which ſhall be regulated by the laws before mentioned. ſ. 68, 76

BREACH of the PEACE.

1 Seditious words, againſt religion, are indictable, *as tending* to a breach of the peace. *Page* 10 ſ. 6
2 In what caſes ſuch homicide, as happens in the execution of an unlawful action where the principal deſign was a breach of the peace, ſhall be conſtrued murder. 127 ſ. 46, 49
3 An *ineffectual* attack upon another for the purpoſe of robbing him, is puniſhable by fine and impriſonment as a breach of the peace. (Vide attempt to rob) 147. ſ. 3
4 A libel only *tends to* a breach of the peace.

BREACH of TRUST.

1 A mere breach of truſt is no felony by the common law. 134. c. 33
2 By 3 and 4 W. & M. c. 9. whoever ſhall ſteal any of the furniture *let and intruſted to* him with any lodgings ſhall be guilty of felony 137 ſ. 10
3 By 21 Hen. 8. c. 7. ſervants, above eighteen years of age, and not apprentices, who ſhall go away with jewels, &c. delivered to them by their maſters or miſtreſſes to keep to the intent to ſteal the ſame, contrary to the truſt and confidence repoſed in them; or ſhall, being in the ſervice of their maſters, embezzle the ſame without aſſent, &c. to the amount of 40s. are guilty of felony. (Clergy ouſted by 12 Ann. c. 7.) 138 ſ. 11
4 The offender muſt have been a ſervant to the owner of the goods both at the time they were delivered and at the time they were ſtolen ſ. 12
5 The goods muſt be delivered to keep; therefore if the ſervant receive money on his maſter's account and go away with it, he is not within the act; but otherwiſe if he receive the goods from another ſervant, &c. ſ. 13
6 Neither a waſting or conſuming of goods, nor a *choſe en action* are within the act. ſ. 14
7 The goods muſt be the property of the maſter at the time; but cloath &c. delivered to the ſervant no wa changes the property. *Page* 138 ſ. 1
8 By 7 Jac. 1. c. 7. manufacturers i woollens embezzling the wool o yarn delivered to them to manufac ture ſhall be whipped, &c. ſ. 1
9 By 15 Geo. 2. c. 13. ſervants of THE BANK embezzling the property the are entruſted with, are guilty of fe lony without clergy. 139, 14
10 By 5 Geo. 3. c. 25. and 7 Geo. 3 c. 50. ſervants of the poſt-office em bezzling any letter containing a ſe curity for the payment of money; o ſtealing the ſame out of any lette that ſhall come to *his poſſeſſion* ſhal ſuffer death without clergy. 14
11 A caſe upon an indictment on thi act. *ibid* (N)
12 By 17 Geo. 3. c. 56. ſervants in a variety of manufactures, are puniſhed as the acts direct, for purloining the property entruſted to them by their employers. 14

BREAKING.—*Vide Burglary. Forcible Entry.*

BREWERS.

1 No brewer ſhall conſpire to raiſe the price of victuals. 481 ſ. 10
2 No brewer ſhall uſe any molaſſes, courſe ſugar, or any extract or compoſition thereof, in the making beer, &c. 512 ſ. 77
3 Or receive into his cuſtody any quantity of the ſaid materials exceeding 10 *l.* on penalty of 100 *l.* ſ. 78
4 Nor ſhall he uſe any broom, wormwood, or other bitter, inſtead of hops, on pain of 20 *l.* ſ. 79
5 Nor any ſugar, honey, foreign grains, Guinea pepper, eſſentia bine, coculus Indicus, &c. on pain of 20 *l.* ſ. 80
6 By 2 Geo. 3. c. 14. no brewer, &c. ſhall be ſued for advancing the price of beer in a reaſonable degree, and if he ſhall mix any ſmall beer or worts with

with ſmall, he ſhall forfeit 50*l* *Page* 481, 482

BRIDGES.

1 What particular bridges it is made felony to deſtroy. 103 ſ. 9
2 None ſhall make bridges except by cuſtom. 443
3 Perſons bound to repair them muſt make them of ſufficient height and ſtrength according to the courſe of the water. ſ. 1
4 No one ſhall be deemed guilty of treſpaſs for entering lands or laying down materials on the grounds of another, for ſuch purpoſe. *ibid.*
5 The repair of bridges lies upon the county unleſs ſuch part as is within a franchiſe, if there be no ſpecial tenures or preſcriptions to the contrary. *ibid.*
6 A corporation or other perſon may be liable either by tenure or preſcription. ſ. 2
7 But a man is not bound to repair a new bridge built by himſelf for the common good. *ibid.*
8 But a tenant at will of a houſe adjoining a bridge is bound to repair his houſe in reſpect of his poſſeſſion. (N) 1
9 And if a particular diſtrict bound to repair one kind of bridge, build another kind, of more general utility, the county ſhall repair it. 444(N)2
10 Any individual who is liable to repair a bridge may be made a defendant for not repairing, and ſhall pay ſuch fine as ſhall be aſſeſſed; but he may have a remedy over againſt thoſe who are equally liable for their contribution. ſ. 3
11 A plea that the defendant is not bound to repair is bad, unleſs it ſhew who is ſo bound. ſ. 4
12 If the defendant traverſe the charge of repair, the attorney general may take a traverſe upon the traverſe and *ſurmiſe* that the defendants are bound to repair, but no inhabitant ſhall be upon the jury. ſ. 5, 6
13 The indictment muſt allege the *kind* of bridge and if the obligation ariſes from *tenure*, it muſt ſtate where *the lands* lie. *Page* 444 (N)
14 By 22 Hen. 8. c. 5. the ſeſſions are empowered to inquire, hear and determine annoyances of broken bridges in the highways and to order their repair. 445 ſ. 7
15 Where it cannot be known who are bound to repair, bridges without a city or town corporate ſhall be repaired by the county; if within, then by the city or town; and if the bridge ſhall be part in city or county and part in another, each ſhall repair the part accordingly. ſ. 8
16 The mode in which aſſeſſments ſhall be made and levied for the repair of bridges. The manner in which the juſtice may iſſue proceſs, &c. 446, 447
17 Juſtices may allow the collectors reaſonable charges. 448 ſ. 12
18 How the highways at the ends of bridges, within the ſpace of 300 feet ſhall be kept in repair. ſ. 13
19 No private bridges are within the purview of the above act. ſ. 14
20 How far the power of the juſtices extends under this act. ſ. 15
21 Who ſhall be conſidered as inhabitants within the words of the act. 449 ſ. 16
22 The aſſeſſment to be made diſtinctly on each inhabitant. ſ. 17
23 From which no inhabitant can claim any exemption not even by charter or act of parliament. ſ. 18
24 It is queſtionable whether a borough which hath no bridge be not liable to contribute to the repair of the county bridges. ſ. 19
25 By 1 Ann. c. 18. the ſeſſions upon any decayed bridge being preſented, may levy a tax for the repair. ſ. 20
26 All queſtions concerning the repair of bridges ſhall be determined in the county where they lie. 405
27 Except the right of repair either to private perſons or pariſhes ſhall come in queſtion. *ibid.*

28 But

28 But *a certiorari* lies upon an order of juſtices concerning a *private bridge*. *Page* 450 (N) 2
29 And the act of Queen Ann extends only to bridges which the county is bound to repair. *ibid.*
30 The 12 Geo. 2. c. 29. authorizes the levying of the county rate, and orders that the repairs of bridges ſhall be paid therefrom. ſ. 21
31 But no part of the money ſhall be applied to the repair of bridges, until preſentment by the grand jury at the aſſizes or ſeſſions. *ibid.*

BRIBERY.

1 Definition of this offence at common law. 311 c. 67.
2 By 12 Rich. 2. c. 2. the great officers of ſtate ſhall be ſworn not to appoint any of the king's officers for reward. 312
3 By 4 Hen. 4. c. 5. no ſheriff ſhall *let* his bailiwick to farm. 313
4 By 5 and 6 Edw. 6. c. 16. whoever ſhall procure an office by bribery ſhall be diſabled to hold, &c. 313
5 No office in fee is within this act; but the office of chancellor, regiſter, or commiſſary of the eccleſiaſtical courts, are *ibid.*
6 No perſon once diſabled can be again reſtored by any grant or diſpenſation. *ibid.* ſ. 5
7 A colourable bond by a deputy of an office is void; but a bond to pay half the profits, or a ſum certain for a deputation is good. *ibid.*
8 The above ſtatute does not extend to the plantations. *ibid.*
9 Anciently, bribery in a judge was puniſhed as treaſon; and now all bribery is liable to deprivation, fine and impriſonment. 314
10 The Earl of Middleſex fined 5000l. for bribery. ſ. 7
11 An attempt to influence another by means of a bribe is highly criminal; and offering money to a privy-councillor for an office is puniſhable by information. *ibid.* (N)
12 By 7 and 8 Will. 3. c. 7. all ſecrities to procure a ſeat in parliament is void; and the giving of ſuch bribe incurs the penalty of 300l. *Page* 314 ſ.
13 But if the election is void, no action lies for this penalty. ſ. 8 (N)
14 By 2 Geo. 2. c. 24. Candidates or voters, giving or receiving a bribe for a vote at elections forfeit 500 &c. ſ.
15 But if the offender, within twelve months, diſcover another offender ſo as *he* be convicted, the diſcoverer not having himſelf been previouſly convicted, he is indemnified, but no proſecution ſhall be after two years. *ibid.* ſ. 1
16 This ſtatute does not take away the common law proceſs by indictment or information. *ibid.* (N)
17 But the court will not grant information except on ſpecial grounds till after the two years are expired. *ibid.*
18 And perhaps they will remit ſentence on an indictment upon a recognizance to appear at the end of the two years. *ibid.*
19 But after that time they will not ſuſpend the ſentence becauſe one of the witneſſes is indicted for perjury. *ibid.*
20 Nor on affidavits that the offender was a diſcoverer. *ibid.*
21 Nor will they grant new trial becauſe a witneſs was a party in the offence. *ibid.*
22 But they will, in order to aſcertain who was the diſcoverer. *ibid.*
23 Having obtained a verdict is not concluſive proof of being a diſcoverer. *ibid.*
24 For a perſon, who makes an affidavit, on which another obtains a verdict, may be the true diſcoverer. *ibid.*
25 A verdict, only when compleated by a judgment is a conviction, and the court will grant leave to complete it, and it will then relate back to the original diſcovery. *ibid.*
26 A colourable note or laying a wager is bribery within the act, although the

the receiver voted for the oppoſite party. *Page* 314 ſ. 10
27 The bribery precludes the candidate from denying the right of the elector to vote, *ibid.*
28 A man may be guilty although he has not *then* declared himſelf a candidate. *ibid.*
29 It is not neceſſary that the party bribed ſhould be in fact an elector. *ibid.*
30 The declaration for the penalty muſt ſtate the ſort of bribe that was given or received, and not alledge generally "that he took a gift or reward". 316 (N)
31 This defect not helped by verdict. *ibid.*

BUBBLES.

1 To project any ſcheme by public ſubſcription, to the prejudice of national trade, &c. ſimilar to the South Sea project, incurs a *præmunire* by 6 Geo. 1. c. 18. 86 (N) 10
2 And alſo puniſhed as a common nuſance. 364

BUILDING.—*Vide Freehold. Dwelling Houſe. Looms.*

BULLION.

1 Is the ore of gold, but it ſignifies, in general, either gold or ſilver in the maſs. 70 (N) 1
2 The king is intitled to all mines in which it is found. *ibid.*
3 Debaſing bullion provided againſt by ancient ſtatutes. ſ. 1
4 By 6 & 7 Will. 3. c. 17. none ſhall caſt ingots of ſilver, in imitation of Spaniſh bars, on pain of 500l. 72 ſ. 7
5 None ſhall export any molten ſilver, without being marked at Goldſmiths Hall, and a certificate from one of the wardens, that oath had been made by the owner, and one witneſs, that the ſame was lawful ſilver, &c, *ibid.*
6 All ſilver ſhipped without ſuch mark and certificate may be ſeized. 73 ſ. 8
7 No broker, not a goldſmith or refiner, ſhall buy or ſell any molten ſilver on pain of ſix months impriſonment. *Page* 73 ſ. 9
8 All bullion to be entered out in the name of the owner, who ſhall prove whether it be Engliſh or foreign. ſ. 10
9 By 7 & 8 Will. 3. c. 19. no bullion ſhall be ſhipped except certificate ſhall be obtained from the Mayor and Aldermen of London, on oath of the owner and *two witneſſes*, that the ſame is foreign bullion, &c. *ibid.* ſ. 11
10 The certificate to be *circumſtantially* certified to the commiſſioners of cuſtoms, before any *cocket* ſhall be granted. *ibid.*
11 On default the owner ſhall forfeit the bullion, and double value. The captain of the ſhip 200l. &c. The cocket officer 200l. and loſs of office. *ibid.*

Vide Coin. Multiplication.

BULLS.

1 By 13 Eliz. c. 2. whoever ſhall put in uſe any Popiſh bull or inſtrument of abſolution, ſhall be guilty of high treaſon. 67 ſ. 75
2 Acceſſaries after ſhall be guilty of præmunire: *ibid.*
3 Whoever does not diſcloſe the offer of ſuch *bulls*, within ſix weeks, are guilty of miſpriſon of treaſon. *ibid.*
4 By a variety of ſtatutes, the making uſe of Papal bulls is a *præmunire*. 78 ſ. 12, 13
5 It is in the election of the crown to proceed againſt the offender, either for the præmunire or high treaſon. ſ. 13

BULLOCK.—*Vide Cattle.*

1 By 14 Geo. c. 6. and 15 Geo. 2. c. 34. whoever ſhall ſteal, &c. or kill, with intent to ſteal, any bullock, &c. &c. ſhall ſuffer death without clergy.—(N. B. A reward of 10l.) 180 ſ. 3

BURGLARY.

1 Is a felony at common law, in breaking and entering the *manſion houſe* of another in the night *with intent* to commit felony. *Page* 159. c. 38

2 The word *noctanter*, which is abſolutely neceſſary in every indictment for burglary, is ſatisfied by thedegree of darkneſs which may prevent the offender's face from being known. 160. f. 2

3 There muſt be both an actual breaking, and an entry to complete this offence; for it muſt be laid *fregit et intravit*, which will not be ſatisfied, except in ſome ſpecial caſes, by the national breaking implied by law in every treſpaſs. f. 3

4 Therefore, if a houſe be aſſaulted, and the owner fling out his money, it is no burglary. *ibid.*

5 What breaking is ſufficient. f. 4

6 It muſt be more than that which is ſuppoſed in a common treſpaſs. *ibid.*

7 An entrance by an open door, or through a hole, or open window, is not a burglary. *ibid.*

8 But if the thief had opened the door, or the window, or made the hole, or had been in the houſe by the owner's conſent and had unlatched a door therein, or had gone down a chimney, it is burglary. *ibid.*

9 Or if he had aſſaulted the houſe, with intent to rob, and the owner had opened the door, and, thereupon, he had entered, it is burglary. 161

10 So, where divers intending to rob a houſe, knock at the door and by that means obtain entrance. f. 5

11 So alſo, with the ſame intent, to take lodgings and then to fall upon the landlord. *ibid.*

12 Or under pretence of ſearching for felons to obtain entrance by authority of a conſtable. *ibid.*

13 By 12 Ann. c. 7. to enter a houſe by night or day with a felonious intent without breaking it and to *break out of it in the night*, is burglary. *ib.* f. 6

14 What entry is ſufficient. f. 7

15 The leaſt entry with any part of the body, as a foot over the threſhold, or with an inſtrument, weapon, o hand, or hook, or a piſtol withi window, or to turn the key o door, or to lift up a latch, are f ficient entrances to ſatisfy the wo *intravit*. *Page* 161, 1

16 But the thing with which the ent is made, muſt be introduced for t purpoſe of committing the felon and therefore where a center bit w uſed for *breaking* through a do which it had actually perforated, y as it did not appear that any hand inſtrument had *entered* for the pu poſe of committing the felony it w *held* inſufficient. 162 (N)

17 Thoſe who watch on the outſi while others enter, are equal guilty though they never enter at a *ibid.* f,

18 So if a ſervant who is in the hou open the door *feloniouſly*, for the thi to enter, both of them are guilty burglary. f. 9 and (N

19 In what place burglary may b committed. f, 1

20 Burglary may be committed b breaking, &c. houſes, churches, o the gates of a walled town; and i houſes, the word *manſionalis* is in diſpenſibly neceſſary. *ibi*

21 A houſe wherein a man only dwell for part of the year; or which he ha actually hired, but not moved into; o a chamber in an inn of court, or houſe hired by a man's wife for he ſeparate reſidence without his know ledge, for it is the huſband's houſe are all of them ſufficient to ſatisf the words *domus manſionalis*. 16

22 And all out-buildings adjoining t the houſe or within the curtilage, are included, *Vide Garland's Caſe*. f. 1

23 The indictment muſt lay it to be the houſe of the leſſee or firſt tenant, and not of any of the inmates, except they have the intire poſſeſſion. f. 1

24 But a chamber in an inn of court is the houſe of the inmate, becauſe there, Chambers are all as ſeveral houſes, &c. *ibid.*

25 The author contends for a different doctrine, and that it may be laid as the houſe

houſe of the lodger, *ſed quere*, if the owner dwell therein. *Page* 163. ſ. 64

16 If the lodging be actually divided from the reſt of the houſe, and have a ſeparate door, it is certainly the houſe of the lodger. ſ. 15

17 Even though there are other inmates, or though the landlord occupy a cellar under the ſame roof, if he does not ſleep in the houſe. *ibid.* (N) 4

18 But if a place be taken only as a work-ſhop, and no one ſleeps therein, it is not a manſion. ſ. 16

19 Therefore to break into the plate glaſs manufactories, is tranſportation by 13 *Geo. 3. c.* 38. *ibid.*

20 No burglary can be committed by breaking ground incloſed, or a booth or tent. ſ. 17

21 The indictment muſt ſtate, and the verdict find *an intention* to commit felony. ſ. 18

22 For if the intent was treſpaſs only, it is no burglary. *ibid.*

23 But where the felony intended, is made ſo by ſtatute, that is ſufficient. *ibid.*

24 By 10 Geo. 3. c. 48. to receive jewels, &c. obtained by burglary, is tranſportation, &c. 165 ſ. 19. 235 ſ. 9

25 By 23 Geo. 3. c. 88. to be found with implements for houſe-breaking is a miſdemeanor. ſ. 20

26 A man's houſe is conſidered as his caſtle; he may kill an aſſailant with impunity. (N)

27 The manner in which burglary partakes of the nature of treaſon. *ibid.*

28 Clergy is taken away in burglary from principals by 18 Eliz. c. 7. and from acceſſaries before the fact, by 3 & 4 Will. & M. c. 9.

29 Whoever ſhall apprehend a burglar is exempted by 10 and 11 Will. 3. c. 23. from pariſh and ward offices, and the 5 Ann. c. 31. has ſuperadded a reward of forty pounds—and an accomplice who ſhall convict two offenders is intitled to a pardon. *ibid.*

BURIAL.

1 By 3 Jac. 1. c. 5. if any Popiſh recuſant, ſhall be buried otherwiſe than according to the laws of this realm, his repreſentatives, or the perſon cauſing ſuch burial ſhall forfeit 20*l.*

BURNING.—*Vide Arſon.* *Page* 66.

1 To burn the houſe of which another *is in poſſeſſion* is arſon. 165 c. 39

2 By 43 Eliz. c. 13. any corn or grain in the four Northern counties is felony without clergy. 223 ſ. 2

3 By 22 and 23 Car. 2. c. 7. any corn, grain or hay, &c. tranſportation. 224

4 By 36 Hen. 8. c. 6. any wain or cart loaded with coals, &c. 223

5 By 4 and 5 W. and M. c. 23. any covert for the red and black game, whipping and hard labour. ſ. 2

6 By 28 Geo. 2. c. 19. any covert for deer and game, &c. ſhall forfeit from 40s. to 5*l.* *ibid.*

7 By 1 Geo. 1. c. 48. any wood, underwood, or coppice, &c. is felony. 224, ſ. 3

8 By 9 Geo. 1. c. 22. any houſe, barn, or out-houſe, &c. is felony without clergy. ſ. 4

9 By 10 Geo. 2. c. 32. any coal mine is death without clergy. ſ. 5

10 By 9 Geo. 3. c. 29. any wind, water, or other mill, is felony without clergy. ſ. 6

11 By 6 Geo. 1. c. 23. aſſaulting with intention to burn the garments of another, in the public ſtreet is tranſportation. 238

12 By 22 & 23 Car. 2. c. 11. & 1 Ann. c. 9. to burn any ſhip to the prejudice of the owners, or freighters. 4 Geo. 1. c. 12. to the prejudice of the underwriters, felony without clergy. 185 ſ. 10, 11

13 By 12 Geo. 3. c. 24. to burn the king's ſhips of war, or any of the arſenals, or the ſtores, &c. therein, felony without clergy. 75 ſ. 19

14 By 6 Ann. c. 31. ſervants burning, *by negligence*, any dwelling-houſe, &c. forfeit 100 l. 197 c. 53

15 By 27 Geo. 2. c. 15. threatening by anonymous or fictitious letters, to burn houſes, barns, &c. is felony without clergy. 226 ſ. 4

BUSHES.—*Vide Highways.*

1 By 13 Ed. 1. no buſh, &c. whereby a man may lurk to do hurt, ſhall ſtand within 200 feet of either ſide of a highway leading from town to town. But this ſhall not extend to aſhes or great trees. *Page* 382 ſ. 26
2 And if any felony be done by not removing ſuch buſhes, the lord ſhall anſwer. *ibid.*
3 By 13 Geo. 3. c. 78. no buſh, &c. ſhall grow within 15 feet from the centre of any highway, except for ſhelter, ornament, or profit. 407 ſ. 59

BUTCHER.

1 Shall ſell meat by the pound. 481 (N)
2 Or by weight, *or otherwiſe.* *ibid.*
3 Butchers ſhall not conſpire not to do their work but at a certain rate. or not to finiſh what they have begun. ſ 10
4 Cannot ſell meat on a Sunday. 11 (N)
5 But this is no offence at common law, and therefore the indictment muſt conclude *contra formam ſtatuti*, viz. 3 Car. 1. c. 1. *ibid.*
6 The uſual method is to indict for the nuſance. *ibid.*

BUTTER and CHEESE.

1 Every kilderkin of butter ſhall contain 112 lb. every firkin 56 lb, and every patt 14 lb. reckoning 16 ounces to the lb. 514
2 No old and new butter ſhall be mixed, nor whey butter packed with cream, butter, &c. &c. *ibid.*
3 No butter for ſale ſhall be repacked. ſ. 86
4 The manner in which the package ſhall be marked, &c. *ibid.*
5 How the factor or buyer ſhall make the packages. ſ. 87
6 Warehouſe-keepers ſhall ſhip all butter and cheeſe that ſhall be directed to their care, to the London market, without preference. 415

BUTLER

1 A butler, &c. who has the *bare charge* or the *ſpecial uſe* of his maſter's goods, may be guilty of felony in taking them away. *Page* 136 ſ.

BUYING and RECEIVING.—*Vide ſtolen goods.*

BUYING TITLES.—*Vide pretended Titles.*

C.

CABBAGES.

1 By 13 Geo. 3. c. 32. to ſteal or deſtroy cabbages, &c. in a garden, incurs a penalty of 10*l.* 217. ſ. 1

CALENDAR.

1 By 3 Hen. 7. Gaolers muſt certify their priſoners to the gaol delivery to be calendered. 194. (N)

CALLICO.—*Vide Cotton.*

CANONICAL OBEDIENCE.—*Canonical Purgation.*

1 By 2 Hen. 4. c. 1. to purchaſe from the Pope an exemption from canonical obedience, incurs *præmunire.* 7
2 Canonical obedience reſults to the metropolitan, both from inſtitution and ordination. 133. ſ. 7

CANUTUS.—*Vide Engliſeſhire.*

CAPACITY of GUILT.—*Vide Crimes. Age. Infancy.*

CAPIAS.

1 By 14 Geo. 3. c. 86. a *capias* may iſſue againſt any perſon proſecuted for ſmuggling. *Page* 227

CAPIATUR.—*Vide Writ. Proceſs.*

CAPITAL OFFENCES.—*Vide Felonies without Clergy.*

CAPTAIN.

1 If any captain, &c. ſhall wilfully caſt away, burn or otherwiſe deſtroy his ſhip, to the prejudice of the owners, the freighters, or the underwriters, he ſhall ſuffer death without clergy. 185. ſ. 10, 11
2 A captain or other officer in the Eaſt India company's ſervice cannot reſign his commiſſion at all times and under any circumſtances. *ibid.* (N)
3 By 29 Geo. 2. c. 17. Engliſh captains or other officers entering into the ſervice of the French king are guilty of felony without clergy. *ib.*
4 The puniſhment of captains who ſhall carry bullion unlawfully. 73. ſ. 11
5 Burning his ſhip to defraud the underwriters is not piracy. 155. (N)
6 What acts of a captain amount to piracy. ſ. 14
7 The penalty on the crptain for the unlawful tranſportation of wool. 195

CAPTION.

1 The caption of an indictment on the ſtatutes of forcible entry need not ſhew that the juſtices had authority to hear and determine felonies and treſpaſſes. 283. ſ. 36

CARDS.—*Vide Dice.*

1 The king's grant for the ſole making, importing and ſelling, of playing cards is void. 471. ſ. 5
2 The playing with them is, in itſelf, lawful and innocent. *Page* 471

CARRIAGES.—*Vide Purveyors. No. Highways. Turnpike Roads.*

CARRIERS.

1 A carrier who receives goods to carry to a certain place, cannot be ſaid to ſteal them by embezzling them afterwards. 134. ſ. 3
2 But if a carrier open a package and take out part of the goods, with *intention* to ſteal, he is guilty of felony; for he had no poſſeſſion of ſuch *part* diſtinct from the whole. 135. ſ. 5
3 No carrier ſhall travel on a Sunday. 11, 12

CARNAL.

1 All unnatural carnal copulations with man or beaſt come under the notion of ſodomy. 9. c. 4
2 The carnal knowledge of a woman, by force, and againſt her will conſtitutes a rape. 169. c. 41
3 By 18 Eliz. c. 7. ſ. 4. if any perſon ſhall carnally know and abuſe any woman child under the age of ten years, he ſhall ſuffer as a felon without clergy. 170
4 By the ſame ſtatute *rape* is alſo excluded. *ibid.*

CARNALITER COGNOVIT.

1 Are neceſſary in every indictment of rape. 9. ſ. 2

CARROTS.

1 By 13 Geo. 3. c. 32. to ſteal or deſtroy any carrots, &c. in a garden or land incloſed, on conviction in 30 days in a ſummary way forfeits 10 *s.* 217. ſ. 11

CASTRATION.—*Vide Maim.*

1 Was anciently puniſhed with death. *Page* 173. ſ. 3

CASUALTY.

1 If caſual death happens from the proſecution of a *lawful* act, the party is guiltleſs. 5 (N)

CASUAL DEATH.—*Vide Deodand.*

1 Whatever thing *moves* toward the caſual death of any perſon is forfeited as a deodand. 100. c. 26

CASTIGATORY.—*Vide Scold, Ducking Stool.*

CATTLE.—*Vide Slaughter Houſe.*

1 By 22 & 23 Car. 2. c. 7. to deſtroy horſes, ſheep, or other cattle, in the night, is death or tranſportation, in the option of the offender, and may be tried by a jury before three juſtices of the peace. 179 c. 46

2 By 9 Geo. 1. c. 22. whoever ſhall kill, maim, or wound, any cattle, ſhall be guilty of felony without clergy. 180

3 A mare or ſtone colt is within the meaning of the word *cattle*. *ib.* (N)

4 By 27 Eliz. c. 13. the hundred is liable to the amount of 200l. *ib.* ſ. 2

5 By 14 Geo. 2. c. 6. and 15 Geo. 2. c. 34. whoever ſhall ſteal, or kill with that intent, one or more ſheep, bull, cow, ox, ſteer, bullock, heifer, calf, or lamb, but no other cattle whatſoever, ſhall be deprived of the benefit of clergy. *ibid.* ſ. 3

6 The word *heifer* in this act is uſed in contradiſtinction to the word *cow*; therefore evidence of the one will not ſupport an indictment for ſtealing the other. *ibid.* (N) 2

7 By 37 Hen. 8. c. 6. whoever ſhall cut out the tongue of any tamebeaſt, or of any perſon, they being ali ſhall pay treble damages, and for ten pounds. *Page* 180 ſ

8 No ſaleſman within the bills of mortality, ſhall buy or ſell cattle on own account, or on the road comi to market. 515 ſ.

9 How ſuch offenders ſhall be puniſhed.

10 By 9 Geo. 3. c. 39. the crown m prevent importation of cattle up ſuſpicion of the contagion. 1

11 By 21 Geo. 3. c. 67. the driving cattle within the bills of mortality regulated. *ibi*

12 By 26 Geo. 3. 71. ſlaughterin cattle without licence or notice, & is felony. 1

CENSOR.

1 It is queſtioned (1 *Carth.* 478.) whether the cenſor of the college of phyſicians is within the meaning of th the teſt act, 25 Car. 2. c. 2. 17 ſ.

CEPIT.

1 What will ſatisfy the word *Cepit* i an indictment of robbery. 147

CERTIFICATE.

1 Of the oath required by 1 Eliz. c. 1 ſ. 19. made to the King's Bench, i ſufficient in which an eccleſiaſtic need not be ſtiled *clericus*; and the bringing of it need not be ſaid *per mandatum epiſcopi*. *Sed quere* If this ſtatute as to the oath is not repealed by 1 Will. and Mary, c. 8. 81. ſ. 27. 82. ſ. 33, 34, 35

CERTIORARI.

1 A *certiorari* from the King's Bench, is a ſuperſedeas to reſtitution in a forcible entry. 292. ſ. 62

2 By 1 Ann. c. 18. concerning the repair of bridges no *certiorari* ſhall be allowed. 450

3 Nor by 8 Geo. 2. c. 20. for puniſhing deſtroyers of turnpikes. *P.* 193 ſ. 7
4 Nor by 12 Geo. 2. c. 29. for aſſeſſing county rates. 450 ſ. 21
5 Nor on 19 Geo. 2. c. 21. againſt curſing and ſwearing. 12 ſ. 4
6 Nor on 23 Geo. 2. c. 13. againſt ſeducing artificers. 559 ſ. 4
7 Nor on 25 Geo. 2. c. 36. againſt bawdy houſes. 357 ſ. 2
8 Nor on 29 Geo. 2. c. 40. againſt ſtealing lead, iron, &c. 232 ſ. 2
9 Nor on 30 Geo. 2. c. 21. for preſerving fiſh in the Thames. 519
10 Nor on 30 Geo. 2. c. 24. for reſtraining gaming in public houſes. 469
11 Nor on 31 Geo. 2. c. 29. for the regulation of bread. 486
12 Nor on 2 Geo. 3. c. 30 for preventing theſts in bumb-boats.
13 Nor on 10 Geo. 3. c. 18. againſt dog ſtealers. 143

CHAIN.—*Vide Fences.*

CHAIRMEN.

1 By 9 Ann. c. 23. Hackney chairmen and coachmen are permitted to ply within the bills of mortality on a Sunday. 12

CHALLENGE.

1 To challenge another; to carry a challenge, or to provoke a challenge is a very high offence, puniſhable by fine and impriſonment. 266. ſ. 3
2 By 9 Ann. c. 14. ſ. 8. to challenge another on account of money won at play, incurs a forfeiture of goods and two years impriſonment. *ibid.*
3 If death enſues in conſequence of a challenge it is murder. 123. ſ. 24

CHAMPERTY.—*Vide Maintenance. Embracery. Buying a pretended Title.*

1 Is a ſpecies of maintenance. 545. c 84
2 By 3 Edw. 1. c. 25. no officers of the king ſhall maintain ſuits in the king's courts, by covenant for profit. *Page* ſ. 3
3 This means his courts of record only. 546. ſ. 4
4 The word covenant ſignifies all kinds of promiſes and contracts whether by writing or parol. ſ. 5
5 This act applies as well to perſonal as to real actions. ſ. 6
6 Rent out of *land in variance* is within the act; not otherwiſe. ſ. 7
7 In a *writ of Champerty* damage is not eſſential or whether the plea be determined or not. ſ. 8
8 The maintenance is equal whether of the plaintiff or the defendant. ſ. 9
9 But ſuch grants only as are made *in conſideration* of the maintenance are within the act. ſ. 10
10 By 5 Edw. 1. c. 49. no judicial *officers*, &c. ſhall receive freehold in Champerty, pending a plea. ſ. 11
11 This ſtatute only extends to the officers therein named. ſ. 12
12 And they ſhall not purchaſe pending plea however they may be related to the party, and although they do not maintain him. 547. ſ. 13
13 By 28 Ed. 1. c. 11. none ſhall take upon him any ſuit, or covenant to give up his right to another, &c. ſ. 14
14 A conveyance executed, hanging a plea, in conſequence of a previous bargain, is not within the act. ſ. 15
15 Champerty may be in actions, real, perſonal, or mixed, or in ſuits in equity. ſ. 16
16 The voluntary gift of a chattle intereſt pending a plea is within the act. ſ. 17
17 A ſurrender by leſſee to leſſor is not within it. ſ. 18
18 Nor any conveyance of lands by father to ſon, anceſtor to heir apparent. 548. ſ. 19
19 A gift of part of the land, to a counſellor *for his wages* after the ſuit is determined is not within the act, unleſs in conſequence of a previous bargain. ſ. 20
20 By 31 Eliz. c. 5. Champerty may be laid in any county. ſ. 21

CHANCE MEDLEY.—*Vide Manſlaughter.*

1 Homicide without malice, is *ſometimes* called chance medley which ſignifies killing on a ſudden quarrel, or in the commiſſion of an unlawful act. *Page* 115. ſ. 2

2 And being without premeditation there can be no acceſſaries before. ſ. 2

3 Where the treſpaſs of a ſtranger authoriſed by the duty of a gamekeeper will reduce homicide to chance medley. 112. ſ. 8

CHANCERY.

1 It is agreed, contrary to former opinions, that ſuits in chancery to be relieved againſt a judgment at law, are not within the ſtatute of 16 Rich. 2. c. 5. &c. 80. ſ. 17

2 The proviſions of 21 Jac. 1. c. 3. reſpecting ſuits to be relieved againſt monopolies, extends to the court of chancery, &c. 473. ſ. 31

CHANCELLOR.

1 By 25 Edw. 3. if a man ſlay the chancellor, being in his place, during his office, it is high treaſon. 60, 61

2 On information to the chancellor, &c. of ſervants riotouſly ſpoiling their deceaſed maſter's goods, a proclamation may be iſſued, and if they do not appear, they ſhall be attainted of felony. 197

CHAPLAIN.

1 A maſter may accompany his *domeſtic chaplain* to retain counſel, or to engage counſel, and may ſtand by him at his trial without being guilty of maintenance, &c. 541. ſ. 23

CHARMERS.—*Vide Witchcraft.*

1 Charmers or ſorcerers *were* thoſe who by certain incantations pretended to produce ſupernatural events. *Page*

2 This offence was puniſhable as witchcraft, and by the writ *de heretico comburendo*, on relapſe after ſentence. ſ.

3 One taken with the head of a dead man, &c. brought into the king's bench and ſworn, that he would no longer be a ſorcerer. ſ.

4 The degrees of ſorcery deſcribed and puniſhed by 1 Jac. 1. c. 12. repealed by 9 Geo. 2. c. 5. &c. 8,

CHACE.—*Vide Hunters, Fences.*

1 By 6 Geo. 3. c. 48. & 13 Geo. 3. c. 33. whoever ſhall deſtroy the kind of trees therein named in any of his majeſty's chaſes ſhall be fined, &c. for the two firſt offences and tranſported for the third. 210

2 By 9 Geo. 3. c. 41. the above act extends to underwoods, &c. and to all the king's chaſes within the realm. 207

3 The puniſhment of ſuch as ſhall deſtroy the banks, ditches, or fences of chaces. 192

4 The puniſhment for unlawfully hunting fallow deer in any chace, &c. 189

CHASTITY.—*Vide Homicide.*

1 A woman may juſtify murder in defence of it. 108. (N) 1

2 So a huſband is juſtified in protecting the chaſtity of his wife. *ibid.*

3 It is the pride of nature, and moſt lovely characteriſtic of the ſex. *ib.*

4 But the bare ſolicitation of chaſtity is not an indictable offence. 357, c. 74

5 Nor is the actual violation of a daughter's chaſtity conſidered as an injury, unleſs

unleſs in the character of a ſervant, her ſervice is thereby loſt. *Page*

CHEATS.

1 Cheating conſiſts in defrauding or endeavouring to defraud another of his known right, by means of ſome artful device, contrary to the plain rules of honeſty. 343, c. 71
2 But an impoſition effected by means of a *bare naked lie*, without the intervention of any artful contrivance, is not cheating, puniſhable criminally. 344 ſ. 2
3 Common cheating is puniſhable with fine and impriſonment. ſ. 3
4 By 33 Hen. 8. c. 1. whoever ſhall falſely and deceitfully obtain the goods, &c. of another, by colour and means of any *falſe privy token* ſhall be corporally puniſhable in any degree under death, as pillory. &c. ſ. 4
5 The offence may be tried at ſeſſions; and the juſtices may convene ſuſpected offenders. ſ. 5
6 An inſtance of an offender being fined under the act: *ſed vide Coke's* opinion (3 Inſt. 123) that it cannot be done. ſ. 6
7 Caſes, &c. determined upon this act. 345 (N) 2
8 By 30 Geo. 2. c. 24. whoever ſhall *by falſe pretences* obtain the property of another, *with intent* to cheat and defraud any perſon, he ſhall be publicly whipped, or fined and impriſoned, or tranſported, as the court ſhall think fit. 345 ſ. 7
N. B. No *certiorari* lies on this ſtatute. (N)
9 By 16 Car. 2. whoever ſhall *win* any ſum or valuable thing, by any fraud or ill practice, ſhall forfeit treble value, &c. &c. ſ. 8
10 By 9 Ann. c. 14. the offender ſhall forfeit five times the value, be deemed infamous, and ſuffer corporal puniſhment, as in caſes of perjury. ſ. 9
11 But the judgment can only be *quod convictus eſt*, and the fine muſt be recovered by action. *ibid.* (N)

CHEESE.—*Vide Butter.*

CHEQUER ROLL.

1 By 3 Hen. 7. c. 14. If any of the chequer roll of the king's houſhold under the ſtate of a lord, make confederacy to deſtroy or murder the king, or any of the ſworn council, he ſhall be guilty of treaſon. *Page* 74. ſ. 13

CHILD.—*Vide Baſtard. Marriages. Vagrants.*

1 A child under the age of ſeven years cannot be puniſhable for any criminal offence. 1 (N) 1
2 But he may be compelled, in a civil action, to make compenſation.
3 How far a thing ſhall be forfeited as a deodand for the death of a child. 100
4 By 4 and 5 P. & M. c. 8. to allure or take away a woman child, is two years impriſonment, &c. 172

CHOSE in ACTION.

1 Is not within 21 Hen. 8. c. 7. for puniſhing ſervants who ſteal the *goods* delivered to them by their maſters. 139 ſ. 14
2 By 15 Geo. 2. c. 13. if any of the ſervants of the bank ſhall embezzle certain choſes in action, with which they are intruſted, they ſhall be guilty, without clergy. ſ. 17
3 By 5 Geo. 3. c. 25. the ſame is inflicted on ſervants of the poſt office, 140
4 By the common law, *a choſe in action* cannot be the ſubject of larceny. 142
5 But by 2 Geo. 2. c. 25. whoever ſhall ſteal certain ſecurities therein named, notwithſtanding they are termed in law, choſes in action, ſhall be guilty of felony of the ſame nature and degree, as they would be for

taking the money thereby ſecured. *Page* 142 ſ. 22

CHRISTIANITY.—*Vide Church. Religion. Hereſy. Popery. Trinity.*

1 The puuiſhment of thoſe who ſhall deny the truth of the chriſtian religion, &c. 7. ſ. 11
2 Chriſtianity is part of the common law of England. *ibid.*
3 Publiſhing a book to prove the king's government antichriſtian, &c. may be alledged as an overt act of compaſſing his death. 56. ſ. 31

CHRISTMAS DAY.

1 By 13 Geo. 3. c. 80. to kill game, &c. on Chriſtmas day incurs fine, &c. 12

CHURCH.—*Vide Popery.*

1 The puniſhment of abſenting from it. 19. c. 19
2 By 1 Eliz. c. 2. all perſons, having no reaſonable excuſe, ſhall reſort to their pariſh church, or ſome other place of worſhip upon every Sunday, and there behave decently during divine ſervice, upon pain of twelve pence for every offence. ſ. 1
3 By 3 Jac. 1. c. 4. this forfeiture may be levied by the church wardens by diſtreſs or warrant of a juſtice. (N)
4 It is incumbent on the defendant to ſhew the reaſonable excuſe, and needs not be regularly alledged in the indictment. 20
5 If the ſpiritual courts refuſe a reaſonable excuſe, or derogate from the common law, they may be prohibited. ſ. 3
6 Whoever miſbehaves, or quits church during ſervice, is as much within the penalty as if he had been wholly abſent. ſ. 4
7 Whoever is abſent from his pariſh church ſhall be put to prove where he was. *ibid.*
8 The offence of abſence need not be averred in any certain place, for being a non-feaſance, it is not *committed* any where. *Page* 2 ſ
9 By 23 Eliz. c. 1. all perſons abo 16 years of age who ſhall offe againſt the tenor of the 1 Eliz. c. ſhall, being lawfully convicted, fo feit 20*l.* for every month they ſhall abſent themſelves from church. ſ.
10 This penalty of 20*l.* a month do not diſpenſe with that of 12*d.* f every Sunday. ſ.
11 The words, "lawfully convicted would have been implied by law. ſ.
12 No forfeiture accrues unleſs judg ment follow conviction. *ibi*
13 A condemnation on *demurrer*, *nil dicit*, is ſufficient. 2
14 A recuſant ſhall not be excuſe from theſe penalties on account ſickneſs. ſ. 1
15 The month intended by the ſtatut ſhall be computed by the number days, allowing 28 to each month. ſ. 1
16 A *feme covert* is within theſe ſta tutes. (N
17 By 29 Eliz. c. 6. and 3 Jac. 1. 4. every offender *convicted* on th above ſtatutes, ſhall *pay* 20*l.* fo every month, after ſuch convictio until he conform and come t church. ſ. 1
18 If the offender neglect to pay th forfeitures in the conviction, and th penalties of theſe ſtatutes, the kin may ſeize his perſonal, and tw thirds of his hereditaments, leaſe and farms, notwithſtanding any pri or conveyance. ſ. 1
19 By 3 Jac. 1. c. 4. the king may re fuſe the 20*l.* a month, and ſeize th hereditaments, &c. leaving the man ſion houſe as part of the third part ſ. 1
20 But this election waives the benef of the 20*l.* a month, and the ſeizur of the goods. ſ. 1
21 A bond may be taken as the good of the offender. 22. ſ. 1
22 But no copyhold lands are liabl to be ſeized. ſ. 16
23 By 3 Jac. 1. c. 4. the profits of th lands ſhall go to ſatisfy the 20*l.* ſ. 1
24 *Quere* if the king may ſeize an eſtat conveyed *bona fide* by another in truſ fo

for a recuſant. He may ſeize an eſtate granted to a recuſant in truſt to another. *Page* 21 ſ. 18
35 How the penalties ſhall be recovered. *ibid.*
36 By 3 Jac. 1. c. 4. One juſtice, on confeſſion, or oath of one witneſs may iſſue a warrant to the church warden where the offender dwells to levy the twelve pence on the offender's goods, by diſtreſs, for the uſe of the poor. 23. ſ. 19
37 The recovery of the 20*l.* contained in the conviction may be recovered at the ſuit of the king by indictment in the king's bench, aſſizes, or ſeſſions. 23, 24
38 And if the offender do not appear upon proclamation, he ſhall ſtand convicted. ſ. 22
39 But ſuch a conviction is no judgment, and therefore cannot be reverſed by writ of error, but muſt be moved into the exchequer and quaſhed, nor ſhall ſuch a forfeiture be within the exception of a general pardon. ſ. 23
30 If the proclamation do not purſue the ſtatute, the conviction will be inſufficient. ſ. 22
31 An appearance, unleſs entered of record, is not ſufficient. ſ. 25
32 *Quere* if default to a proclamation will amount to a conviction in the king's bench. ſ. 26
33 On appearance of the defendant, the proceedings ought to be according to the common law. ſ. 27
34 By 3 Jac. 1. no ſuch indictment ſhall be avoided for defect, other than by direct traverſe to the point of not coming to church, *unleſs the defendant conforms.* 25
35 But the party may plead any collateral matter as a pardon, or *autre fois acquit*, &c. ſ. 28
36 He may reverſe a judgment after verdict for a defect to the king's prejudice. ſ. 29
37 By 35 Eliz. c. 1. the ſaid forfeitures may be recovered by action of debt, &c. at Weſtminſter. ſ. 30
38 This ſtatute was made to proceed againſt the huſband for the recuſancy of the wife, which could not be done by the indictment given by the former ſtatute. *Page* 24, ſ. 31
39 On an indictment the huſband could not be charged for the forfeiture of his wife. *ibid.*
40 But his lands, &c. in her right, may be ſeized on her conviction. *ibid,*
41 How informers may proceed. ſ. 32
42 By 23 Eliz. c. 1. forfeitures are diſtributed ⅓ to the queen, ⅓ to the poor, ⅓ to the informer, by action of debt, &c. 26
43 Offenders refuſing to pay within three months after judgment, ſhall be committed until they pay or conform. *ibid.*
44 This clauſe extends to the 20 *l.* a month. ſ. 33
45 An informer may ſue for his own third part or for the whole penalty. ſ. 34
46 An informer may ſue for the forfeitures againſt one not proceeded againſt by the king. ſ. 35
47 The 29 Eliz. c. 6. extends only to indictments, but does not take away the juriſdiction of the common pleas or exchequer, as to information. ſ. 36, 37
48 A conviction at the king's ſuit may be pleaded to a ſuit by an informer. 27. ſ. 38
49 It is doubtful whether the conviction of a feme covert can be pleaded to an information againſt her and her huſband. ſ. 39
50 The right of ſeizure, given to the king by 29 Eliz c. 6. does not extend to a conviction by action or information. ſ. 40
51 How the 20*l.* a month after conviction ſhall be recovered. ſ. 41
52 By 29 Eliz. c. 6. & 3 Jac. 1. the offender, once convicted, ſhall pay 20*l.* a month without any other indictment or conviction, into the exchequer every Eaſter and Michaelmas term, or the king may ſeize, &c. ſ. 41
53 But this clauſe extends to no convictions without judgment be given thereon. 28
54 How it extends to conviction for default of appearance on proclamation. *ibid,*

55 In what manner profecutions ſhall be againſt the offender's land and goods. *Page* 27, ſ. 43, 44
56 No ſeizure can be made till inquiſition found. ſ. 45
57 The king cannot, without inquiſition, grant over the offender's goods. 29, ſ. 46
58 By 3 Jac. 1. c. 5. no recuſant convict ſhall be diſabled from following *any profeſſion, or being executors*, adminiſtrators, or guardians, on pain of 100 *l.* ſ. 47, 48
59 By 23 Eliz. c. 1. every perſon forbearing church twleve months ſhall on certificate thereof to the king's bench, be bound to good behaviour in 200*l.* at leaſt. ſ. 49
60 How the forfeiture may be diſcharged. ſ. 50
61 By 23 Eliz. c. 1 offenders conforming in the manner the act directs ſhall be diſcharged of all forfeitures. ſ. 50
62 By 29 Eliz. c. 6. an offender who conforms, or ſhall fortune to die, no 20 *l.* a month or ſeizure ſhall be made, while he continues to attend divine ſervice. 30
63 And by 1 Jac. 1. c. 4. a recuſant conforming according to the above ſtatutes ſhall be diſcharged of all penalties which he might ſuſtain by reaſon of his recuſancy. ſ. 52
64 This conformity may be pleaded againſt an informer as well as the king, by *audita querela* after judgment againſt an informer, and before execution againſt the king. ſ. 53
65 But the profits which have been ſeized ſhall not be reſtored. ſ. 54
66 The inheritance of the proteſtant heir ſhall not be liable to the recuſancy of his anceſtor, unleſs the two parts of the lands were ſeized during the life of the anceſtor. ſ. 55
67 But a recuſant heir muſt conform to free his fee ſimple lands from the conviction of his anceſtor, whether the lands were ſeized or not. ſ. 56
68 How lands in fee tail may be ſeized by force of a judgment or proclamation. *ibid.*
69 By 3 Jac. 1. c. 4. whoever ſhall r tain in his ſervice any inmate w ſhall not go to ſome church or ch pel where the common prayer is u ed, &c. for one month, ſhall forf 10 *l.* a month. *Page* 31. c.

CHURCH WARDENS.

1 By 3 Car. 1. c. 3. the penalties f keeping alehouſes without licence be levied by the church wardens the uſe of the poor. 46
2 By 21 Jac. 1. c. 7. the church wa dens oath enlarged to preſent offe ces contrary to 1 Jac. 1. c. 9. f reſtraining tippling. 46
3 By 11 Geo. 2. c. 26. church wa dens, &c. required to carry hawke of brandy, &c. before juſtices.
4 They may levy the forfeiture of 12 for not coming to church. 1
5 They are excepted out of the teſt a of 25 Car. 2. c. 2. ſ. 17. 17. ſ.
6 They may whip boys for playing i the church, or pull off the hats o thoſe who refuſe to take them off, o may gently turn out diſturbers of di vine ſervice, without incurring th penalties of 5 & 6 Edw. 6. c. 4 272. ſ. 2

CISTEAUX.

1 By 2 Hen. 4. c. 4. to put in execu tion bulls purchaſed by thoſe of th order of Ciſteaux to be diſcharge tithes, is præmunire. 7

CLANDESTINE.—*Vide Marriage. Smuggling.*

CLERGY.—*Vide Felonies.*

CLERGYMEN.

1 By 1 Eliz. c. 2. clergymen refuſing to uſe the common prayer, or ſpeaking in derogation of it, forfeit a year's

year's profit, and ſuffer ſix months impriſonment for the firſt offence, and deprivation for the ſecond. *Page* 14. ſ. 2

2 How they may be deſcribed in a certificate on 5 Eliz. c. 1. for refuſing the oaths. 82 ſ. 33

3 Are within the ſtatute of highways. 377 ſ. 15.

4 Are ſufficiently ſhewn in an indictment, to be in holy orders by the word, *clericus*. 14 ſ. 3

CLIPPING.—*Vide Coin.*

1 Clippers of the coin are not within the ſtatute of treaſons. 62 ſ. 55

2 By 5 Eliz. c. 11. clipping. &c. any of the monies of this realm, or foreign money, ſuffered to be current *by proclamation* is made high treaſon. 63 ſ. 61

3 By 18 Eliz. c. 1. whoever, *for lucre*, ſhall diminiſh, lighten, &c. &c. any of the monies as aforeſaid, ſhall be guilty of high treaſon, loſe goods, &c. &c. and lands during life, but no corruption of blood. *ibid.*

4 Aiders, conſenters, and abettors, are equally guilty. *ibid.*

CLOATHS.

1 Maliciouſly to deſtroy the garments of another in the public ſtreet is tranſportation. 238

COALS.

1 The coal buſhel ſhall be round, and 19½ inches in diameter, and contain one Wincheſter buſhel and one quart of water. 524

2 All ſea coal brought into the Thames, ſhall be ſold by the chaldron of 36 buſhels; and coals ſold by weight ſhall in proportion be 112 lb. *avoirdupois* to every cwt. ſ. 130

3 Any three juſtices may ſet the price of ſea coal, and if any perſon ſhall refuſe to ſell, they may enter the place and ſell the ſame. *Page* 524, ſ. 131

COAT ARMOUR.—*Vide Affrays.*

COERCION. *Vide Coverture, Treaſon.*

COIN.—*Vide High Treaſon.*

1 By 25 Ed. 3. c. 2. to counterfeit the king's money is high treaſon 61 ſ. 54

2 Thoſe who coin the king's money, without authority, are guilty within this clauſe, whether they utter it or not. 62 ſ. 55

3 So alſo are the authoriſed *minters*, if they coin it of baſer alloy than the ſtandard. *ibid.*

4 Receivers and comforters alſo are equally guilty, but clippers are not within *this* act. *ibid.*

5 But to complete the crime, the counterfeiting muſt be ſuch as to render the coin paſſable. (N) 13

6 And uttering falſe money is neither treaſon nor miſpriſion thereof within *this act*. ſ. 56

7 And only gold and ſilver coined within the realm, by the king's authority, is "the king's money." ſ. 57

8 But by 1 Mar. c. 6. to counterfeit the gold or ſilver coin, *not of the realm*, made current *by conſent* of the crown, or to aid or abet therein, is high treaſon. ſ. 59

9 And by 14 Eliz. c. 3. to counterfeit gold or ſilver coin, not of the realm, nor permitted to be current, or to aid or abet therein, is miſpriſion of treaſon. ſ. 60

10 By 5 Eliz. c. 11. clipping, waſhing, rounding or filing, for lucre or gain, any of the proper monies of this realm, or of any other realm made current by *proclamation*, or aiding therein, is declared high treaſon. 63 ſ. 61

11 By 18 Eliz. c. 1. to impair, diminiſh, falſify, ſcale, or lighten, by any art or means, for *lucre or gain*, any *ſuch* monies, or to aid or conſent

ſent thereto, is high treaſon, with loſs of goods abſolutely, lands during life only, but no corruption or loſs of dower. *Page* 63 ſ. 61

12 By 8 and 9 Will. 3. c. 26. whoever, except the minters, ſhall make, &c. any puncheon, counterpuncheon, matrix, ſtamp, dye, pattern, or mould, in or upon which ſhall be made, or which will make the figure, ſtamp, reſemblance, &c. (*infra*, No. 17) of both or either of the ſides of any current gold or ſilver coin, ſhall be guilty of high treaſon. 64

13 Whoever ſhall make or mend, &c. any edger, or edging tool, inſtrument, or engine, not of common uſe in any trade, but contrived for marking the edges of money, with ſuch letters or grainings, as thoſe on money coined in the mint, ſhall be guilty of high treaſon. *ibid.*

14 Whoever ſhall make or mend, &c. any preſs for coinage, or any cutting engine, for making blanks, by force of a ſcrew, out of flatted bars of gold or ſilver, ſhall be guilty of high treaſon. *ibid.*

15 Whoever ſhall, *knowingly*, have any ſuch puncheon, counterpuncheon, matrix, ſtamp, dye, edger, cutting inſtrument, or other tool or inſtrument before mentioned, ſhall be guilty of high treaſon. *ibid.*

16 The words "pattern or mould," (*Vide ſupra* No. 12.) are omitted in the above clauſe, (No. 15.) but it has been determined, that they are comprized in the words "tool or inſtrument;" and that the *ſpecial* term is ſufficient in an indictment, without averring the thing to be a tool or inſtrument within the act. 63 (N) 14

17 It is alſo determined that if the *ſtamp* of the coin is impreſſed or formed, in, or upon any of the inſtruments enumerated in the act, it is immaterial whether it be laid in the indictment as an inſtrument on which the reſemblance of the coin is made, or an inſtrument which will make the reſemblance (*Vide ſup.* No. 12) But it is better to lay the fact according to the ſtatute. *Note* (15)

18 Counſellors, procurers, aiders, & are within this act, but no corru tion of blood or loſs of dower ſha enſue. *Page*

19 By 7 Ann. c. 25. proſecutions up the above ſtatute, for making, & the tools or inſtruments therein pr hibited, or for milling the edges money, ſhall be commenced with ſix months. *ibi*

20 By 8 & 9 Will. 3. c. 26. ſ. 2. convey or aſſiſt in conveying a coining tools out of the *mint*, is hi treaſon. *ibi*

21 Or to mark the edges of any the current, diminiſhed, or counte feit coin of the kingdom, with t *uſual* letters or grainings, or to counſ or aſſiſt therein, is high treaſon. *ibi*

22 Whoever ſhall colour, gild, or ca over, with gold or ſilver, or wi any waſh, or materials producing th colour of gold or ſilver, any of t current coin, or blanks of baſe met of a fit ſize to be coined into coun terfeited milled money; or ſhall ai or abet therein, are declared guilt of high treaſon. *ibi*

23 It has been adjudged immateria whether the colouring be *put on*, o made to *ariſe out of* the ſubject co loured. (N) 1

24 Coining tools or inſtruments found in the cuſtody of any perſon not *minter* may be ſeized, carried before a juſtice, produced at the trial, and there deſtroyed. 6

25 By 15 Geo. 2. c. 28. to waſh, gild or colour, or to add to, or alter the im preſſion of any ſhilling or ſix pence real or counterfeited, with intent to make them reſemble, either a guinea or half guinea, is high treaſon. ſ. 6

26 So alſo to file, alter, waſh, or colour any halfpenny or farthing with intent to make them reſpectively reſemble either a ſhilling or a ſixpence is high treaſon. *ibid.*

27 Counſellors, aiders, abettors and procurers are within this ſtatute *ibid.*

28 The counterfeit money muſt be in the *likeneſs and ſimilitude* of the lawful money. (N) 17

29 By

29 By 25 Ed. 3. c. 2. to bring falſe money into the realm, counterfeit according to the ſimilitude of the money of *England*, to merchandize, or make payment with, is high treaſon. *Page* 61. 65

30 By 1 & 2 P. & M. c. 11. to bring into the realm, money, counterfeit to foreign coin current here, is high treaſon. *ibid*

31 The party bringing muſt know it to be falſe. ſ. 66

32 It muſt be from a foreign nation, and not from any place ſubject to the Britiſh throne. ſ. 67

33 The bare uttering is not within theſe ſtatutes. 66

34 By ancient ſtatute a ſuſpected perſon may be arreſted for having falſe money. ſ. 68

35 And *quære*, if the money need to be actually merchandized with, or paid away (*Vide* No. 29, 30.) ſ. 69

36 The ſtandard of coin is 2 car. copper to 22 car. of gold, 18 dwts. copper to 11 oz. 2 dwts. ſilver. 70 (N)1

37 The ſtandard can only be altered by parliament. *ibid.*

38 By 9 & 10 W. 3. c. 21. and 13 Geo. 3. c. 71. Gold or ſilver money diminiſhed, or counterfeit may be cut by the perſon to whom tendered. But at his riſque if it prove otherwiſe. 71 ſ. 3

39 By 15 Geo. 2. c. 28. Knowingly to utter any falſe or counterfeit money incurs, for the firſt offence, ſix months impriſonment and ſurety for ſix months more. For the ſecond offence two years impriſonment and ſurety for 2 years. The third offence is death. ſ. 4

40 To tender in payment any *ſuch* money, twice within ten days, or to have one or more pieces thereof in cuſtody, beſides what is tendered, is, for the firſt offence, two years impriſonment and two years ſecurity. The ſecond offence is death without clergy. *ibid.*

41 The proſecution muſt be within ſix months. *ibid.*

42 To coin or counterfeit a ½ or ¼ is two years impriſonment. 72

43 But by 11 Geo. 3. c. 40. to commit, or to aid or aſſiſt in this offence is felony. *Page* 72, ſ. 5

44 To buy, ſell, take, receive, pay, or put off any counterfeit copper money not cut in pieces, at a lower rate or value than it imports to be of, or was counterfeited for, is felony. *ibid.*

45 A juſtice on the oath of one witneſs may iſſue a warrant to ſearch for coining inſtruments, &c. *ibid.*

46 By 13 Eliz c. 2. thoſe who forge foreign coin not current here, their aiders, &c. are guilty of miſpriſion of treaſon. 87 ſ. 7

COLONIES.—*Vide Tranſportation.*

COLLATERAL.

1 A collateral iſſue may be pleaded and replied to *ore tenus*, and a *venire* awarded, returnable *inſtanter*. 3(N)5

COLLUSION.

1 If any ſerjeant, pleader, or other, be guilty of colluſion, how he ſhall be puniſhed. 542 ſ. 29

COMBINATIONS.—*Vide Conſpiracy.*

COMBUSTIO DOMORUM.—*Vide Arſon.*

COMBAT.

1 The victor, in a judicial combat, is juſtified from the imputation of murder, and the reaſon of it. 107 ſ. 16

COMMAND.

1 A forcible entry, committed by the command of an infant or feme covert, will

will not involve them in the guilt. *Page* 283 ſ. 35

COMPOS MENTIS. —*Vide Non Compos.*

COMMISSIONERS. —*Vide Bankrupt.*

COMMON.

1 A common is not within the ſtatutes of forcible entry. 282

COMMON COUNCIL MAN.

1 Is within the corporation act of 13 Car, 2. 15 ſ. 1

COMMON LAW COURTS.

1 Have no cognizance of *mere* hereſy; but if the conſequences of it becomes injurious to the public peace, the offender may be indicted. 6 ſ. 6
2 They may incidentally take cognizance of hereſy, in judging of offences ordained by ſtatute. ſ. 7
3 On a *quare impedit*, if the cauſe be hereſy, the biſhop muſt ſpecify it particularly, that the temporal court may direct the jury accordingly. ſ. 7
4 But a perſon agrieved for hereſy in a ſpiritual court, cannot move for a prohibition. ſ. 9
5 To draw any out of the realm, in plea, which belongs to the common law courts, or to ſue in other courts to defeat the judgments given there, incurs præmunire. 79 ſ. 14, 15

COMMONS.

1 To aſſert that the houſe of commons or the houſe of lords, have legiſlative authority, without the king, is treaſon. 69

COMMON WEALTH.

Offences againſt it are;
1 Imbezzling of Records. 17
2 A gaoler forcing his priſoners to appear. 19
3 Obſtructing lawful proceſs
4 Eſcaping from cuſtody.
5 Priſon Breach. } Bk. 2
6 Reſcous.
7 Returning from tranſportation. 244
8 Theft bote 252. 237
9 Knowingly receiving ſtolen goods 232
10 Common Barratry. 524
11 Maintenance. 535
12 Champerty. 345
13 Compounding of informations.
14 Conſpiracy. 346
15 Perjury. 318
16 Bribery. 311
17 Embracery. 548
18 Extortion. 310

COMMON PRAYER.

1 The firſt eſtabliſhment of it. 13, 14
2 By 1 Eliz. c. 2. miniſters neglecting to uſe it, or ſpeaking in derogation of it, forfeit one year's profit, and ſuffer 6 months impriſonment for the firſt offence, and deprivation for the ſecond. 14 ſ. 2
3 Clergymen without a *cure* are within this act. ſ. 3
4 In an indictment, the word *clericus* is ſufficient to ſhew they are within holy orders. *ibid.*
5 This ſtatute does not reſtrain the ſpiritual court from proceeding againſt offenders, as diſturbers of the unity and peace of the church, &c. ſ. 4
6 Alſo by 1 Eliz, c. 2. to detract the ſaid book in plays, ſongs, &c. or to procure a miniſter to alter the form, or to let any other miniſter ſay a different form of prayer, is a forfeiture of 100 marks, or ſix months impriſonment for the firſt offence, 400 marks, or twelve months impriſonment for the ſecond if not paid in ſix weeks,

weeks, and for the third loſs of goods and impriſonment for life. *Page* 400 ſ. 5

6 *Quære* whether the impriſonment ſhall enſue if the offender die without paying the penalty within ſix weeks. ſ. 6

8 To diſturb the reading of the common prayer is within the penalties of 1 Mary, ſ. 2. c. 3. 272 ſ. 30

COMPANION.

1 By 25 Edw. 3 if a man do violate *the King's Companion*, he is guilty of high treaſon. 50

2 By the king's companion is meant his wife. *ibid.*

COMPUTATION.

1 A month ſhall be computed by the number of days, allowing 28 days to each, according to the common rule where a month is generally ſpoken of. 21 ſ. 11

2 But an aſſurance for payment of money with intereſt, ſhall be computed by calendar months, for otherwiſe it would be uſury. 530 ſ. 13

3 How miles ſhall be computed. 35 ſ. 15

4 In murder within a year and a day, the whole day on which the hurt was done, ſhall be reckoned firſt. 119 ſ. 9

COMPASS.—*Vide High Treaſon.*

CONCEALMENT.

1 Concealment, or procuring the concealment of felony, whether by common law or by ſtatute, is miſpriſion. 251 ſ. 2

2 The concealment of treaſure *trove* is miſpriſion. (N) 1

3 By 3 Edw. 1. c. 9. ſheriff, coroner, or bailiff, &c. who ſhall conceal, conſent, or procure to conceal the felonies done in their liberties, ſhall be fined and impriſoned at the king's pleaſure. ſ. 3

4 By 3 Hen. 7. c. 1. juſtices may ſummon a jury to enquire of the concealments made by other inqueſts, &c. *Page* 251 ſ. 4

CONIES.

1 In a foreſt, chace, or warren, not the ſubject of larceny at common law. 144 ſ. 26

2 By 9 Geo. 1. c. 22. to rob any place where conies are kept, being armed, and diſguiſed, is felony without clergy. 187

CONFORMITY.

1 The offence in accepting or holding an office without due conformity to the church. 15 c. 4

2 Non-conformity in officers conſiſts in not receiving the ſacrament and in attending other worſhip than the church *ibid.*

3 The offence of teaching ſchool without conformity to the church. 18 c. 9

4 For non-conformity of papiſts, &c. *Vide Church. Diſſenters.*

CONSERVATORS.—*Vide Conſtable.*

CONSPIRACY.

1 A definition of conſpiracy. 346 c. 72

2 Barely to conſpire to indict another maliciouſly, whether any thing be done in proſecution of ſuch intent, or not, is conſpiracy. ſ. 2

3 But a bare conſpiracy to indict another, will not maintain *the writ of conſpiracy*. 347

4 Nor can *the writ* be brought, unleſs the party indicted be acquitted *ibid.*

5 But, perhaps, *a writ* may be formed to meet the caſe of a perſon falſly indicted who has not been acquitted. *ibid.*

6 And it is certain that an *action on the caſe in the nature of ſuch a writ* doth lie for a malicious proſecution, although it doth not proceed to an indictment. *Page* 347
7 And an indictment or information may be brought for conſpiracies within the ſtatute of Edward the Firſt (vide p. 346.) 348
8 In an action for a malicious proſecution, the plaintiff muſt ſhew that the original ſuit is at an end. *ibid.* (N) 1
9 It is ſafeſt to form an indictment at common law, for a malicious accuſation. 48
10 And for this offence a man may be not only ſentenced to the pillory but branded. *ibid.*
11 At common law, all confederacies wrongfully to prejudice a third perſon are criminal. *ibid.*
12 The offence conſiſts in the conſpiracy; and it is criminal to conſpire to do a lawful act. *ibid.*
13 The fact of conſpiring need not be directly proved; it may be collected from collateral circumſtances. *ibid.* (N) 2
14 And if the parties concur in doing the act, although unacquainted with each other, it is conſpiracy. *ibid.*
15 The inſufficiency of the indictment; want of juriſdiction in the court; or the improbability of injuring the defendant, is no juſtification in conſpiracy for a malicious proſecution. ſ. 3
16 Nor is it any plea that the party only intended to give evidence in the regular and legal courſe of juſtice. 349 ſ. 4
17 But no juror is liable, to any proſecution, in reſpect to any verdict given by him, either upon a grand or petit jury. ſ. 5
18 Judges of record alſo, are freed from all proſecution for any thing done by them as judges. 350 ſ. 6
19 Yet if a judge turn ſolicitor; tampers with witneſſes, or labor jurors, he may be puniſhed. *ibid.*
20 Conſpiracy, upon the ſtatute (Vide p. 346) muſt be both falſe and malicious. *Page* 350 ſ.
21 Therefore, if the defendants in writ of conſpiracy, can prove a probable cauſe, they ſhall be diſcharged. *ibid.*
22 But *quere* if it can be given in evidence on the general iſſue. *ibid.*
23 One perſon cannot be guilty of conſpiracy upon the ſtatute. ſ.
24 Therefore huſband and wife cannot be indicted alone, for they are but one; and the acquittal of all but one, is an acquittal of all. *ibid.*
25 But an action on the caſe in the nature of a writ of conſpiracy, may be brought againſt one only. *ibid.*
26 And if brought againſt ſeveral, and all but one be acquitted, yet judgment may be given againſt him. *ibid.*
27 A conſpirator convicted at the ſuit of the party ſhall pay damages, and have fine and impriſonment. ſ. 9
28 When at the ſuit of the king, *the villainous judgment* was formerly given. *ibid.*
29 But this is obſolete; and the puniſhment is pillory, fine, impriſonment and ſurety for behaviour. 352 (N) 3
30 Quarter ſeſſions have juriſdiction, in conſpiracy. *ibid.*
31 On motion to arreſt judgment, the defendant muſt be perſonally preſent. *ibid.*

CONSENT.

1 In bigamy, if *either* of the parties are within the age of conſent, *both* of them are protected, by the exception, from the penalties of 1 Jac. 1. c. 11. 174 ſ. 6

CONTEMPTS.

1 Againſt the king's palace. 87 c. 21
2 Fighting therein, was anciently, a capital offence. ſ. 1

3 By 33 Hen. 8. c. 12. ſtriking and drawing blood therein is puniſhed with loſs of the hand, perpetual impriſonment, and fine at pleaſure. *Page* 87 ſ. 1
4 But *quere* if the king be not reſident therein at the time of the offence. 88
5 The inſtance in 3 Inſt. 140, for ſtriking in the tower is not warranted by the record. *ibid.*
6 And *quere* if a peer can be impriſoned by the king's bench for the nonpayment of a fine, *if it be exorbitant*, for this offence. (N) 1
7 Againſt the king's courts. 88 ſ. 3
8 Striking therein, where the king is only conſtructively, is an offence at common law, and more penal than ſtriking where he is actually preſent. *ibid.*
9 For to draw a ſword in the preſence of one of the judges therein, whether he ſtrike or not, or to ſtrike a juror or other perſon, loſes hand, goods, profit of lands, and if laid as *coram domino rege*, it is perpetual impriſonment. *ibid.*
10 To which *ſon aſſault demeſne*, is no juſtification. ſ. 4
11 To reſcue a priſoner from any of the courts, is loſs of goods, profits of lands, and impriſonment for life, and if he ſtrike, loſs of hand. ſ. 5
12 An affray near the ſaid courts, is fine and impriſonment. ſ. 6
13 Threatning, or reproachful words to a judge on the bench, is a high miſpriſion. ſ. 7
14 To reflect on the juſtice and honour of thoſe *high* courts, is an indictable offence. 89
15 Whoever gives the lie in Weſtminſter-hall, ſitting the courts, ſhall be bound to good behaviour. ſ. 9
16 To make an affray in the preſence of the king's inferior courts is fineable, but no loſs of hand. ſ. 10
17 To ſpeak reproachfully to the judge of ſuch a court in the execution of his office, is fineable immediately, and *perhaps* indictable. ſ. 11
18 Formerly ſlandering the juſtice of the nation was indictable. ſ. 12
19 But now the offender may only be bound to good behaviour, except the offence was committed againſt *ſuch officers* in the actual execution of office. *Page* 89 ſ. 13
20 Inſtances of this kind for which a man ſhall *not* be indicted, 90
21 But the injurious treatment of perſons under the protection of the king's courts is a contempt. ſ. 14
22 To ſuppreſs the truth during an examination is a contempt of court. ſ. 15
23 So alſo to diſſuade a witneſs from giving evidence againſt a priſoner. *ibid.*
24 Or to adviſe a priſoner to ſtand mute. *ibid.*
25 If a grand jury diſcover to a perſon indicted, the evidence againſt him, it is high miſpriſion. *ibid.*
26 Contempts againſt the prerogative. 91 c 22
27 Refuſing to aſſiſt the king for the national good. ſ. 2
28 As for a peer to neglect a ſummons to parliament. *ibid.*
29 Or to depart from thence without licence. *ibid.*
30 Or for a privy councillor to refuſe his advice. *ibid.*
31 Or for a private ſubject to refuſe to defend the kingdom againſt foreign invaſion. *ibid.*
32 Preferring the intereſt of a foreign prince; or to receive a penſion from him without leave, is contempt of prerogative. ſ. 3
33 To diſobey what the law enjoins. ſ. 4
34 As refuſing obedience to writs, &c. *ibid.*
35 Or not anſwering the privy council in matters of ſtate. *ibid.*
36 Or refuſing to give evidence to the grand jury. *ibid.*
37 Or not returning from beyond ſea, upon notice. *ibid.*
38 Or going beyond ſea againſt a *ne exeat regnum*. *ibid.*
39 So alſo every contempt of a ſtatute is indictable, if no other puniſhment be limited. 92 ſ. 5
40 Neglecting to join the *poſſe comitatus* is a contempt. (N) 1
41 Contempts

41 Contempts againſt the king's perſon. *Page* 96 c. 23
42 Spreading falſe rumours concerning the king's intentions. ſ. 4
43 Charging him with a breach of his coronation oath. ſ. 5
44 Speaking contemptuouſly of him 93 ſ 6
45 of contempts againſt the government. 92 c. 23
46 As charging it with oppreſſion or weak adminiſtration. ſ. 1
47 Or abſolving perſons at the gallows. ſ. 2
48 Or drinking to *the pious memory* of a traitor, &c, *ibid.*
49 Or endeavouring to frighten the king into a change of meaſures. ſ. 3
50 And *perhaps* to refuſe the cuſtom in a foreign port. 93 ſ. 7
51 Contempts againſt the king's title. 93 c. 24
52 How far the offence of denying his title is a contempt. 93, 94
53 How far refuſing to take the oath of allegiance is a contempt of the king's title. at common law. 94, 95
54 How far refuſing to take the oaths of allegiance, ſupremacy, and abjuration, *as directed by ſtatute*, is a contempt, &c. 95 to 99

CONSTABLE.

1 Conſtables are not within the teſt act. 25 Car. 2. c. 2. 17 ſ. 4
2 Every high and petty conſtable is a conſervator of the peace, by common law, within their ſeveral limits. c. 63. ſ. 14

CONTINGENCY.

1 How far a perſon who has only a contingent intereſt may maintain another in a ſuit on the ſubject on which the contingency is to operate. 538 ſ. 14, 15

CONTRA PACEM.

1 The words *contra pacem* are eſſentially neceſſary in an indictment for barratry. *Page* 526, ſ. 1

CONVENTICLES.

1 Eſtabliſhed for diffuſing heretical tenets can only become the ſubject of indictment at common law, when they raiſe factions which may tend to diſturb the publick peace. 6 ſ.
2 By 1 Mary, ſ. 2. c. 3. certain diſturbers of licenſed conventicles, are directed to be puniſhed in a ſummary way. 272 ſ. 3
3 The King's Bench will grant an information for diſturbing proteſtant diſſenters conventicles. 49 (N)

CONVICTS.—*Vide Tranſportation.*

CONVICTION.—*Vide Hereſy, Felony by Statute.*

1 It is always implied by law, that there muſt be a conviction before puniſhment. 20 ſ. 8
2 A conviction is of no effect unleſs judgment be given thereon. *ibid.*
3 For every judgment implies a conviction; but a conviction does not imply a judgment. 21
4 A party has no remedy againſt an inſufficient conviction but to move it into the ſuperior court, and quaſh it. 24
5 What conviction will be ſufficient for abſenting from church. 24
6 How far a conviction may be pleaded in a bar to a ſubſequent proſecution. 27
7 An additional puniſhment for a ſecond offence, can never be inflicted, unleſs there has been a previous conviction for the firſt offence. 67 ſ. 74 168 ſ. 3

CONVOCATION.

1 The convocation may declare what opinions are heretical. *Page* 6 f. 3
2 But cannot convict a heretick. *ibid.*

COPY.—*Vide Books. Authors.*

1 Copying a libel has been held concluſive evidence of publication; except ſome ſubſequent act is done to explain the precedent intention. 355 f. 10

COPYHOLD.

1 Not liable to be ſeiſed for recuſancy. 22 f. 16

CORONATION OATH.

1 To charge the king with a breach of his coronation oath is a contempt againſt his perſon. 96 f. 5

CORPORATION.

1 Muſt repair their own bridges. 445 f. 8
2 Aggregate, may be bound to repair bridges, either by ſpecial tenure, or preſcription. 443 f. 2
3 May be compelled to repair highways by force of a general preſcription. 369 f. 8
4 May ſet the price of victuals notwithſtanding the 25 Hen. 8. c. 2. 481 f. 8
5 Are puniſhable for riot in their natural, but not in their public capacity. 298 f. 13
6 How they may be puniſhed for ſuffering riots. *ibid.*
7 The corporation act. 16

CORN.

1 To aſſault with intent to hinder the exportation of corn is a miſdemeanor puniſhable by hard labour for three months, &c. &c. 243 app. 12
2 To commit the offence a ſecond time, or to deſtroy any ſtore-houſe or granary in which corn is lodged for the purpoſe of exportation; or to ſpoil the grain therein, is tranſportation for ſeven years. *Page* 243 f. 2
3 The hundred liable to the damage not exceeding 100l. 244 f. 3
4 Puniſhment for ſelling corn otherwiſe than by the Wincheſter buſhel. 486
5 If any magiſtrate ſhall permit it to be otherwiſe ſold, he ſhall forfeit 5l. *ibid.* f 2
6 The manner in which corn ſhall be meaſured. f. 3 & 4
7 By 22 and 23 Car. 2. c. 7. to burn ſtacks or ricks of corn, &c. is felony. 166 f. 2
8 And by 43 Eliz. c. 13. if committed in any of the four northern counties it is felony without clergy. *ibid.*
9 By 9 Geo. 1 c. 22. whoever ſhall ſet fire to any ſtack of corn ſhall ſuffer death without clergy. 224

CORONER.—*Vide Deodand, Inquiſition.*

1 There can be no forfeiture as a *deodand*, nor can any thing be ſeiſed as ſuch, till it be found by the coroner's inqueſt to have cauſed a man's death. 101 f. 8
2 But after the coroner has made his inquiſition, which ought to find the value, the ſheriff is anſwerable for it and may levy for it on the town *where it fell.* 101, 102
3 If the coroner neglect to make an inqueſt, it cannot be taken by the grand jury. (N) 37
4 When taken by the coroner it may be moved and traverſed. *ibid.*
5 The perſonal eſtate of a *felo de ſe* is not veſted in the king until the coroner has taken his inqueſt 104
6 Such inquiſitions ought to be by the coroner, *ſuper viſum corporis*, if the body can be found. *ibid* f. 10
7 And it is ſaid *this kind* of inquiſition cannot be traverſed. *ibid.* f. 11
8 The coroner has only authority *ſuper viſum corporis*, and if the body cannot be found, the inquiſition may be taken

taken by the King's Bench, or by a juſtice of the peace. *Page* 104 ſ. 12
9 And *their* inquiſition may be traverſed. *ibid.*
10 The manner in which their inquiſitions ought to find the fact. ſ. 13, 14
11 If they be full in ſubſtance, the coroner may be ſerved with a rule to amend defect of form. ſ. 15
12 For murder or manſlaughter, the party is always arraigned and tried upon the coroner's inqueſt, as well as upon the indictment.

COSTS.

1 By 5 Eliz. c. 14. the defendant convicted of forgery, ſhall pay double coſts. 339
2 By 21 Jac. 1. c. 3. there ſhall be double coſts againſt monopoliſers. 474

COTTONS.—*Vide Forgery.*

1 The puniſhment for cotton manufacturers aſſaulting or abuſing their maſters. 239
2 By 22 Geo. 3. c. 40. whoever ſhall enter by force any place, with intent to deſtroy any callico, cottons, &c. in the loom, or ſhall actually cut the ſame out, or deſtroy any of the utenſils, &c. ſhall be guilty of felony without benefit of clergy. 240, 241
3 By 4 Geo. 2. c. 16. and 18 Geo. 2. c. 18. to ſteal cottons from bleaching or printing grounds, is felony without clergy, but the judge may tranſport for 14 years 146 (N) 13

CORRUPTION OF BLOOD.

1 Where a ſtatute ſaves the corruption of blood, it impliedly ſaves the deſcent of the land of the offender to the heir. 169 ſ. 5
2 It is the immediate conſequence of an attainder.
3 This conſequence is ſaved by a variety of ſtatutes.
4 The Blood of a *felo de ſe* is not corrupted. *Page* 103. ſ.

COVENANT.

1 The word "covenant" in 3 Edw. againſt champerty, includes promiſe either by writing or parol. 546 ſ.

COVENTRY ACT.—*Vide Main.*

1 By 22 & 23 Car. 2. c. 1. whoever ſhall, by lying in wait, diſable the tongue, put out the eye, ſlit the noſe cut off the lip, or any limb or member of another *with intent* to maim or diſfigure, he, his aider, &c. ſhall ſuffer death without clergy. 176

COUNCIL *and* COUNSELLOR. *Vide Barriſter.*

1 By 5 Eliz. c. 14. counſellors ſhall not be puniſhed for ſhewing a falſe deed in evidence.
2 By 3 Jac. 1. c. 5. no popiſh recuſant ſhall be a counſellor
3 If a privy counſellor refuſe the king his advice, it is a contempt of the prerogative. 91. ſ. 2

COUNTERFEITER.—*Vide Treaſon. Felony. Forgery.*

COUNTY.

1 By 33 Hen. 8. c. 23. traitors or principal murderers, by order of the privy council may be tried, by ſpecial commiſſion, in *any* county. 119 ſ. 11
2 By 27 Hen. 8. c. 4. and 28 Hen. 8. c. 15. a murder done at ſea, may be tried in any county. *ibid.* ſ. 12
3 By 2 Geo. 2. c. 21. Principals and acceſſaries to a murder, where the ſtroke, &c. is at ſea, and the death on land, or *e converſo*, may be tried in the county where either the death or ſtroke ſhall be. 120

4 By

4 By 2 & 3 Ed. 6. c. 24. a wound in one county, and the death in another, ſhall be tried in the county where the death ſhall happen. *Page* 121
5 By 26 Hen. 8. c. 6. a murder in Wales may be tried in the next adjoining Engliſh county. *ibid.* ſ. 14
6 But appeals muſt be brought in the proper county. (*Sed vide* 2 Geo. 2 c. 21) *ibid.*
7 Larceny in one county, and the goods carried into another county, the offender may be indicted in either. 136 ſ. 9.
8 But in a robbery at ſea, the pirate cannot be indicted in the county to which he carries the goods taken. 137
9 By 13 Geo. 3. c. 31. Larceny in Scotland may be tried in any county where the goods are found, &c. and *e converſo.* *ibid.*
10 Which ſhall be conſidered as the next adjoining Engliſh county to Wales. 220, 221

COURTS.—*Vide Tranſportation.*

COVERTURE.

1 The coverture of a woman protects her from puniſhment for committing bare thefts in company with, or coercion of her huſband. 4
2 This exemption extends to burglary, and *ſeemingly* to robbery. *ibid.* (N) 8
3 It alſo protects her from being an acceſſary in felony by receiving her guilty huſband. ſ. 10
4 And in treaſon, from being deemed a principal by ſuch reception. (N) 9
5 But coverture will not protect a wife for a theft committed of her own voluntary act, &c. ſ. 11
6 Nor will it protect her from the conſequences of treaſon, murder, *or robbery* (quere) under any circumſtances. *ibid.*
7 Nor for receiving ſtolen goods without her huſband's privity. (N) 10
8 Nor is it any protection to a malicious appeal. ſ. 13
9 And in general, coverture is no protection for any offence *not capital*, againſt the common law or ſtatute. *Page* 4. ſ. 13.
10 A wife cannot commit larceny of the goods of her huſband, by reaſon of the coverture. 141. ſ. 19
11 Coverture no protection in forcible entry. 283. ſ. 35

CREEKS.—*Vide Piracy.*

1 Of felonies committed therein. 152. c. 37

CRIMES.

1 What perſons may be guilty of them. 1
2 Neither infants, ideots or lunatics can be puniſhed for crimes. 2
3 Formerly held, that a mad man might be puniſhed for treaſon. *ibid.*
4 Whoever is guilty of a crime through drunkenneſs ſhall be puniſhed. 3
5 Whoever incites a mad man to commit a crime, is a principal offender. ſ. 7
6 How far a *feme covert* is puniſhable for crimes. 4
7 A crime committed by a ſon or a ſervant ſhall not be excuſed by the command either of parent or maſter. 8
8 How thoſe who charge another with the crime of witchcraft ſhall be puniſhed. 9

CROWN.

1 Every king in actual poſſeſſion of the crown, is a king within 25 Ed. 3. c. 2. 52
2 The crown deſcends to the heir within this act, before his coronation. 53 ſ. 19
3 By 1 W. & M. c. 2. Papiſts are rendered incapable to poſſeſs or enjoy the crown of this realm. ſ. 21

4 Soliciting a prince, in amity with the crown, to invade the realm, is treaſon. *Page* 56
5 By 4 Ann. c. 8. to maintain that the pretended prince of Wales, or any other, hath any title to the crown otherwiſe than according to 1 W. & M. c. 2. or 11 & 12 W. 3. c. 2. or that the kings of this realm, by authority of parliament, are not able to limit and bind the crown, &c. is high treaſon. 69 ſ. 85

CROW.

1 By 23 Geo. 3. c. 88. any perſon apprehended with a crow, intending to break any houſe, &c. ſhall be deemed rogue and vagabond. 165

CUCKING STOOL.

1 Sometimes called Ducking Stool, the uſual puniſhment for a *common ſcold.* 365

CURSING.

1 By 19 Geo. 2. c. 21. for profane curſing and ſwearing, every labourer, common ſoldier, or ſailor, ſhall forfeit 1*s* every other perſon under the degree of a gentleman, 2*s*. every perſon of above that degree, 5*s*. 12 ſ. 4
2 On a ſecond conviction the penalties ſhall be double, and for every other conviction treble the ſum firſt forfeited. *ibid.*
3 If not immediately paid or ſecured, the offender being a labourer or gentleman ſhall be ſent to the houſe of correction for 10 days, and a common ſoldier or ſailor in employ ſhall be ſet in the ſtocks for two hours, &c. *ibid.*
4 A juſtice may convict on his own hearing, or on confeſſion, or the oath of one witneſs. *ibid.*
5 The conſtable muſt inform if he knows the offender, if not, he muſt apprehend. *ibid.*
6 This act to be read in all churches after every quarter day. *ibid.*

CUTLASS.

1 By 23 Geo. 3. c. 88. perſons apprehended with a cutlaſs with intention to aſſault another ſhall be deemed rogue and vagabond. *Page* 14

CUT PURSE.—*Vide Larceny. Privately Stealing.*

CUTTING—*Vide Maim. Hop Bind. Coventry Act.*

CYPHERING.

1 By 5 Eliz. c. 1. whoever, by writing cyphering, &c. ſhall extoll the Pope's juriſdiction, ſhall be guilty of a *præmunire* 67 ſ. 72

D.

DAMAGES.

1 The double damages given by 5 Eliz. c. 4. for forging a releaſe of an obligation, &c. ſhall be governed by the penalty. 342 ſ. 24

DEAD BODY.

1 To take a dead body from the grave, to be uſed in witchcraft was within 1 Jac. 1 c. 12. now repealed. 8

DEADLY FEUD.

1 By 43 Eliz. c. 13. to burn any barn, or ſtack of corn or hay, or to prey or make ſpoil of the perſons or goods of the ſubject upon *deadly feud* in the four Northern counties is felony without clergy.

DEATH.—*Vide Homicide. Caſual Death. Deodand.*

DEBATING.

1 By 21 Geo. 3. c. 49. all houſes for publicly debating, &c. on any part of the Lord's day to which perſons ſhall be admitted for money, or by charging an unuſual price for refreſhments, &c. ſhall be deemed a diſorderly houſe, and the keeper, maſter, and director thereof, ſubject to fine and impriſonment. *Page* 12

DEBTS.

1 A Popiſh heir has no other mode of exonerating the inheritance from the debts due by the recuſancy of his anceſtor than to conform. 30 ſ. 56

DEBTORS.

1 Inſolvent, may be brought to the quarter ſeſſions and obliged to deliver a ſchedule of their eſtate and effects, and for pejury therein, or in refuſing, for 40 days, to deliver ſuch ſchedule, guilty of felony without clergy. 204 ſ. 4

DECEITS.

1 Deceitful practices, to defraud another of his known right *by means of artful deviſes*, contrary to the plain rules of common honeſty, are puniſhable at common law. 343

2 Inſtances of this ſpecies of deceit. *ibid.*

3 The deceit muſt be accompanied with *an artful contrivance*, and not wholly depend *on a bare naked* lie. 344

4 By 33 Hen. 8. c. 1. deceitfully to obtain the property of another by any privy falſe token, or fictitious letter, &c. ſhall be liable to any *corporal puniſhment* ſhort of death *Page* 344 ſ. 4

5 The offender may be tried before the chancellor, or at the aſſizes, or quarter ſeſſions, &c. *ibid.*

6 And there has been an inſtance of a perſon fined 500*l.* upon this ſtatute. 345

7 Inſtances of what ſhall be conſidered a privy falſe token. (N) 2

8 By 30 Geo. 2. c. 24. to obtain property *by falſe pretences*, with intent to cheat another, ſubjects the offender to pillory, whipping, fine, impriſonment or tranſportation. ſ. 7

9 By 16 Car. 2. c. 7. deceitfully to defraud another at any of the games mentioned in the act, ſubjects the offender to forfeiture, &c. of treble value. ſ. 8

10 By 9 Ann. c. 14. to win money by any deceitful practice, ſubjects the offender to five times the value won, renders him infamous, and liable to puniſhment as in caſes of perjury. ſ. 9

11 No counſellor or attorney can juſtify uſing *any* deceitful practice in maintenance of a client's cauſe. 542 ſ. 29

12 By ſt. Weſt. 1. c. 29. if any ſerjeant, pleader, or other, do any manner of deceit or colluſion in the king's court, &c. he ſhall be diſqualified, &c. &c. *ibid.*

DECIES TANTUM.

1 By 38 Ed. 3. c. 12. if any juror take bribe to give their verdict, he ſhall pay *ten times as much* as he hath taken, half to any who will ſue for the ſame as directed by 34 Edw. 3. c 8. 551

2 It is a good plea in bar to actions of *decies tantum*, that there was no ſuch cauſe as that in which it is alledged the juror was bribed. ſ. 11

3 A variance between the firſt record and the declaration on this ſtatute will abate the writ. *ibid.*

4 But only ſo much of the record need be ſtated as is neceſſary to give the plaintiff his action. *ibid.*

5 The declaration muſt ſhew that the bribe was given to the juror. *Page* 551 ſ. 12
6 So alſo the preciſe ſum given muſt be ſtated. ſ. 13
7 But money given after verdict, is not within the act, unleſs in conſequence of a previous contract. ſ. 14
8 Whether a verdict was, or was not given, is immaterial. ſ. 15
9 If ſeveral be joined in one action they ſhould plead ſeparately. 552
10 Which ſhould be a ſpecial denial if not receiving the money and not the general iſſue. ſ. 17
11 The plaintiff ſhall be paid his moiety or a *decies tantum* before the king, &c. ſ. 18
12 The huſband may ſue alone, although the offence were committed in a ſuit to which both huſband and wife were parties, ſ. 19
13 No colourable purchaſe of land ſhall evade the ſtatute. ſ. 20
14 This action may be barred by the king's releaſe, *before action brought by the informer*. ſ. 21
15 Outlawry lies not in *decies tantum*, only *a capias*, and diſtreſs infinite. ſ. 22
16 And no *capias* lies in a foreign country. *ibid.*
17 The penalty can only affect lands had at the time of the *decies tantum*, &c. ſ. 53

DECLARATION.

1 How far it is criminal to refuſe the declaration againſt Popery. c. 14

DEER.

1 By the common law, deer *feræ naturæ*, and roving at large, are not the ſubject of larceny. 144 ſ. 26
2 But if ſhut up in a houſe, or even incloſed in a park in ſuch a manner as the owner may retake them whenever he pleaſes, felony may be committed by taking them. *ibid.*
3 By 9 Geo. 1. c. 22. if any perſon ſhall appear *armed and diſguiſed* in any incloſed place wherein any deer are kept, or ſhall unlawfully hunt or deſtroy any fallow deer; or *whether armed or diſguiſed or not*, ſhall kill, or ſteal any red deer in the king's incloſed chaſes or foreſts, ſhall ſuffer without clergy. *Page* 107
4 The offender may be proclaimed, and not ſubmitting, he ſhall be adjudged guilty of felony without clergy. 187 188
5 By 5 Geo. 1. c. 28. whoever ſhall enter into any incloſed grounds where deer are uſually kept, and wilfully hunt or kill any red or fallow deer without licence from the owner, he ſhall be tranſported for ſeven years. 189
6 By 16 Geo. 3. c. 30. whoever ſhall kill, &c. or *attempt* to kill, wound, or deſtroy, or ſhall ſteal any fallow deer, or ſhall aid therein, ſhall forfeit 20 *l.* for attempting, &c. 30 *l.* for killing, &c. if a keeper, double, and on a ſecond conviction *of any* of theſe offences, the offender ſhall be tranſported. *ibid.*
7 Juſtices may ſearch for the ſkins, &c. of ſtolen deer, and if any be found, and the party ſhall not give a ſatisfactory account how he became poſſeſſed of it, he ſhall forfeit any ſum between 10 *l.* and 30 *l.* 190 ſ. 8
8 And if the perſon in whoſe cuſtody the ſame ſhall be found ſhall not be liable to conviction, the juſtices may ſummon all thoſe through whoſe hands ſuch ſkin, &c. ſhall have paſſed, &c. 190
9 Whoever ſhall *lay* ſnares for deer, ſhall forfeit from 5 *l.* to 10 *l.* for the firſt offence, and from 10 *l.* to 20 *l.* for every other. 191
10 And whoever ſhall come *armed* into any ancient walk, incloſed ground, *with intent* to ſhoot at or to take any deer, the rangers may ſeize guns and dogs in the ſame manner as game-keepers. *ibid.*
11 And if any ſuch perſon ſhall there beat or wound any ranger, &c. or his aſſiſtants

assistants in the execution of his office, or shall attempt to rescue any offender, he shall be transported for 7 years. *Page* 191 s. 10

DEFAMATION.—*Vide Libel.*

DEFENCE.

1 A man in defence of his person may justify killing another who assaults him feloniously. 109 s. 24
2 But *quære*, if the assault is made where the person may safely retreat. s. 25
3 By 24 Hen. 8. c. 5. whoever shall be indicted for killing another attempting murder, robbery, or burglary, shall be fully acquitted and discharged. 110

DEMOLITION.

1 By 1 Geo. 1. c. 5. Riotously, tumultuously, and forcibly, to demolish or to pull down, or to begin to demolish or pull down, any church, chapel, or meeting-house, or any dwelling-house, barn, stable, &c. &c. is felony without clergy. 308
2 By 9 Geo. 3. c. 29. the above act is extended to the demolition of all kind of mills. 309

DEODANDS.

1 Is a forfeiture to the king of the instrument, which occasions the death of another. 100
2 Especially such as occasions casual death. *ibid.*
3 As where one is killed by a fall from a horse, cart, or other thing. *ibid.*
4 And it is due for the death of infants as well as adults
5 The origin of this forfeiture. *ibid.* (N) 1
6 Fixtures, as a wheel of a mill, &c. may be a *deodand*. 101
7 But a ship is not. *ibid.*
8 And only the very particular part of the thing which causes the death, is forfeited: *Page* 101
9 Nothing forfeited if the party die not within the year and day. *ibid.* s. 7
10 Nor till after inquisition. s 8
11 But it is an odious claim and not favoured by the courts 102 (N) 3

DEROGATION.

1 To derogate from the king's common law courts is præmunire. 79 s. 14
2 The punishment for speaking in derogation of the common prayer. 14 s. 5

DESERTION.

1 By 1 Geo. 1. c. 47. if any person shall persuade a soldier to desert, he shall forfeit 40*l.* 75
2 By 18 Hen. 6. c. 19. desertion was made felony, but this statute is obsolete. 184
3 By 3 Hen. 8. c. 5. Desertion is felony without clergy. 185
4 By 2 Edw. 6 c. 2. if any soldier shall depart without licence, &c. &c. he shall be guilty of felony without clergy. *ibid.*

DETAINER.—*See Forcible Entry.*

DEMURRER.

1 Judgment on demurrer *or nihil dicit* is a sufficient conviction on the 23 Eliz. c. 1. for the penalty of 20*l.* a month for absenting from church. 20 s. 9

DENIZEN.—*Vide Allegiance.*

DENYING.

1 It is a high contempt to deny the king's title. 93

DEPRAVING.

1 The puniſhment for depraving the book of common prayer. *Page* 14 ſ. 5

DEPRIVATION.--*See Spiritual Courts.*

1 Miniſters, offending againſt the 1 Eliz. c. 2. reſpecting the uſe of the common prayer, may be deprived by the ſpiritual court for the firſt offence. 14 ſ. 4

DEPUTY.

1 A bond by a deputy of an office to pay a certain ſum, at all events, is bribery. But a bond to pay half the profits, or a certain ſum out of the profits of an office, for a deputation, is not. 313

DICE.

1 Playing with falſe dice, is an indictable offence 343 c. 71
2 It is puniſhable with *infamy*, fine and impriſonment. 344 ſ. 3
3 By 16 Car. 2. c. 7. if any perſon ſhall defraud another by playing at dice, &c. or by betting on the ſide of ſuch as do play, he ſhall forfeit treble what is won. 345 ſ. 8
4 By 9 Ann. c. 14. he ſhall forfeit five times the value, be deemed infamous, and ſuffer as in caſes of perjury. ſ. 9

DIMINUTION.

1 By 18 Eliz. c. 1. to impair, *diminiſh*, falſify, ſcale, or lighten the coin, &c. is high treaſon. 63

DISABILITY.

1 Thoſe who are under a *natural diſability* of diſtinguiſhing between good and evil; as infants under the age of diſcretion, ideots, and lunaticks, are not puniſhable by any criminal proſecution whatſoever. *Page* 1, 2
2 But in treſpaſs, this diſability ſhall not excuſe from making a civil compenſation for the injury. 3. ſ. 5
3 In what caſes a *feme covert* is *diſabled* from committing crimes, by the command or coercion of her huſband.
4 The diſabilities to which a man is reduced by the offence of Popiſh recuſancy. 32 to 35
5 Diſabling a man of thoſe parts which abate his courage, &c. or which prevent his fighting, are held maims. 175

DISCOVER.

1 What diſcovery is neceſſary to exempt a perſon from the crime of treaſon. 87
2 What diſcovery will indemnify againſt the penalty for bribery at elections. 315

DISCRETION.—*Vide Infancy, Lunatick. Ideot.*

1 Where the human mind is incapable of diſcretion, it is alſo incapable of guilt. 1
2 Infants under the age of diſcretion are not puniſhable by any criminal proſecution. 2
3 The law preſumes them to have acquired diſcretion on the attainment of fourteen years of age. (N) 1
4 But from ſeven to fourteen years of age, if they appear to poſſeſs diſcretion they are liable to puniſhment. *ibid.*
5 But within the age of ſeven years, no diſcretion ſhall be preſumed, whatever circumſtance may appear. *ibid.*
6 Ideots and lunaticks are ſuppoſed to be without diſcretion. *ibid.*
7 But every perſon of the age of diſcretion is preſumed of ſane memory unleſs the contrary appear. 3 (N) 5
8 In what caſes the magiſtrate may exerciſe his diſcretion in taking ſurety for the good behaviour. 262
9 The meaſure of puniſhment for affrayers to be regulated by the diſcretion of the judges. 270. ſ. 20

10 How far the king's bench may exerciſe a diſcretion over the conduct of the juſtices granting a reſtitution of forcible entry. *Page* 292. ſ. 63 to 66
11 Perſons wanting diſcretion who commit a treſpaſs againſt another ſhall make reparation in damages. 3. ſ. 5
12 The indiſcretion of drunkenneſs is no excuſe from puniſhment. ſ. 6

DISFIGURING.—*Vide Maim.*

1 Cutting off the ear, noſe, or the like, of another are not *maims* by the common law, becauſe they do *not weaken*, but only *diſfigure* the party. 176
2 By 22 & 23 Car. 2. c. 1. whoever ſhall, by lying in wait, cut out or diſable the tongue, &c. or any limb or member of another with *intent to maim or to diſfigure him*, his aiders, abettors, &c. ſhall be guilty of felony, *ſans* clergy. *ibid.*

DISGUISE.—*Vide Black Act, Smuggling.*

DISMEMBERING.—*Vide Maim.*

DISOBEDIENCE.

1 It is a high contempt to diſobey the king's lawful commands and prohibitions. 91

DISPENSATION.

1 No diſpenſation whatſoever ſhall reſtore an offender againſt 5 & 6 Edw. 6. c. 16 to a capacity to hold the office he has contracted for. 313 ſ. 5

DISSEISIN.—*Vide Forcible Entry.*

1 It is fatal to an indictment of forcible entry to alledge a *diſſeiſin* of ſuch eſtates of which a perſon cannot be diſſeiſed as a leaſe for years, a copyhold, &c. 285. ſ. 39
2 So alſo if it ſtate the diſſeiſin to be of land *adtunc & adhuc exiſtens liberum tenementum*, *I. S.* &c. *ibid.*
3 But *quere* if this repugnancy may not be reconciled by intending that the diſſeiſee might re-enter after the diſſeiſin and before the indictment. *Page* 285. ſ. 39
4 In what manner the time and place of the diſſeiſin in forcible entry are ſufficently ſet forth. 286. ſ. 42 to 45

DISSENTERS.

1 May by virtue of the toleration act, 1 W. & M. c. 18. refuſe to take the oaths of office required by the corporation and teſt acts of 13 Car. 2. c. 1. and 25 Car. 2. c. 2. and may refuſe to ſerve the office of ſheriff, upon account of not chuſing to take the oaths, &c. notwithſtanding they be duly elected; and the 5 Geo. 1. c. 6. confirms officers in their offices who have not qualified as above required. 16 (N) 2
2 Diſſenters taking the oaths directed by 30 Car. 2. are not within 23 Eliz. c. 1. 18 ſ. 3
3 Proteſtant diſſenters exempted by the toleration act from all penal laws relating to religion, except 25 Car. 2. c. 2. and 30 Car. 2. c. 1. provided they take the oaths, &c. and attend a regiſtered place of worſhip, &c. 47
4 In regiſtering ſuch place, the juſtices are merely miniſterial; and if the parties are not within the certificate, they are not protected. 47 (N) 1
5 Nor will the act protect any but real diſſenters. *ibid.*
6 Diſſenting teachers tolerated *ibid.* ſ. 2
7 May qualify, pending proſecution. 48
8 Thoſe who ſcruple to take the oaths are within the protection, provided they ſubſcribe the declaration. *ibid.* ſ. 3
9 Spiritual courts cannot proceed againſt perſons maimed in a licenſed conventicle. 40 ſ. 4
10 Diſſenting miniſters or teachers who ſcruple to take the oaths are to ſubſcribe the declaration directed by 19 Geo. 3. c. 44. *ibid.*
11 But this does not intitle them to hold the maſterſhip of any royal college, &c. *ibid.*
12 How far the law favours diſſenters and how the act of toleration is to be conſtrued. 49

DISORDERLY HOUSES.——*Vide Bawdy-house. Debating. Lord's Day.*

DISORDERLY PERSONS.—*Vide Vagrants.*

DITCHES.——*Vide Highways.*

1 By the common law, the tenant of the *lands adjoining* to highways are bound to ſcower their ditches. *Page* 368 ſ. 5

2 But not thoſe who have lands next adjoining to ſuch lands, unleſs by preſcription. 405 ſ. 52

3 By 13 Geo. 3. c. 78. ſ. 30. all occupiers of lands are liable to be rated toward the making tunnels for ſcowring of ditches. 379 ſ. 20

4 Surveyors of the highways may order all nuiſances in, or obſtructions of ditches, &c. to be removed, on perſonal notice thereof to the occupier, and if not removed within twenty days, the ſurveyor ſhall remove them at the expence of the occupier who ſhall pay one penny a foot, &c. 395

5 The poſſeſſors of land next adjoining every highway, ſhall make ditches, &c. of a ſufficient depth and breadth, for keeping the highways dry, and ſhall ſcour and cleanſe the ſame, and make ſufficient trunks, tunnels, &c. on pain of 10*s.* after ten days notice by the ſurveyor. 406 ſ. 55

6 The ſurveyor, by order of one juſtice, ſhall make new ditches and drains in and through the adjoining lands, or any other lands if neceſſary; and to keep ſuch ditches, &c. ſcoured, &c. the ſurveyor, with proper workmen, may go upon the lands. 407

7 Surveyors ſhall make proper trunks, &c. over ſuch ditches, for the convenient uſe of the lands; keep the ſame in repair; and make ſatisfaction to the owner for the damage ſuſtained thereby. ſ. 57

8 If any perſon, in making, cleanſing, or ſcowering the ditches, ſhall permit the ſoil thrown out, to obſtruct or prejudice the highway, for five days after notice by the ſurveyor, he ſhall forfeit 10*s.* 408 ſ. 62

9 If any perſon ſhall encroach on the highway, by making any ditch within 15 feet from the centre, &c. &c. he ſhall forfeit 40*s.* and the ſame ſhall be filled up again at the expence of the offender. *Page* 409

10 How far the powers given by the highway acts relating to ditches, &c. may be extended to turnpike roads 441

DIVORCE.

1 Perſons divorced *a vinculo matrimonii*, or even *a menſa et thoro cauſa adulterii vel ſævitiæ* may marry again without incurring the penalties of bigamy by 1 Jac. 1. c. 11. 174 ſ. 5

2 And for this purpoſe the word *ſeparamus* without the word *divortiamus* in the ſentence will be ſufficient, *ibid.*

DIVINE SERVICE.—*Vide Church. Abſence.*

DOGS.

1 It is no felony at common law to ſteal dogs, becauſe they are things of a baſe nature. 143

2 But by 10 Geo. 3. c. 18. whoever ſhall ſteal dogs from the owner, or from any perſon intruſted with them by him, or ſhall knowingly buy, ſell, receive, harbour, or detain ſtolen dogs, or ſhall have the ſkin thereof in his cuſtody is liable to certain pecuniary penalties, &c. *ibid.*

3 *Quere*, Whether the ſtealing a bitch is within the penalties of this act. (N) 8

4 The particular ſort of dog ſtolen muſt be deſcribed. *ibid.*

DOORS.

1 The conſtable may break open doors to ſuppreſs an affray, and if the offenders fly and take refuge in a houſe, he may break open the doors to apprehend them, 269 ſ. 16

DOVE COTE.

1 A dove cote, either erected by the lord or his tenant, is not a common nuiſance. *Page* 362 ſ. 8
2 It may be juſtified by preſcription. *ibid.*
3 It is demandable in a præcipe before any land whatſoever which is not built upon. *ibid.*
4 The owner of a dove cote may juſtify taking another's hawk flying at his pidgeons. *ibid.*
5 But a tenant is liable to an action on the caſe for building a dove cote without licence from the lord. *ibid.*
6 But by 1 Jac. 1. c. 27. and 2 Geo. 3. c. 29. the keeping pidgeons as therein prohibited, is a nuiſance. *ibid*

DOWER.

1 The wife of a *felo de ſe* is not barred from her dower by the felony of her huſband. 103 ſ. 8
2 A title to dower from a houſe of which a wife is truſtee, is not a ſufficient poſſeſſion to avoid the guilt of arſon if ſhe ſet fire to it during the term of her leſſee. 166 (N)
3 A ſtatute which ſaves corruption of blood; or land, to the heir, impliedly ſaves the wife's dower. 169 ſ. 5

DROVERS.—*Vide Saleſman. Cattle.*

1 By 29 Car. 2. c. 7. no drover, horſe courſer, waggoner, butcher, or higgler, ſhall travel, or come to their inn on the Lord's day, on pain of 20*s.* 11 ſ. 3

DRUNKENNESS.

1 A voluntary drunkard ſhall be puniſhed for the crimes committed during his intoxication, as much as if he were ſober. 3 ſ. 6
2 By 4 Jac. 1. c. 5. the offence of drunkenneſs incurs a penalty of 5*s.* to the poor. *Page* 13 ſ. 5
3 By 22 Geo. 2. c. 33. ſeamen ſhall be puniſhed for this offence in the diſcretion of a court-martial. *ibid.*
4 A publican permitting drunkenneſs in his houſe, ſhall forfeit 10*s.* 466 ſ. 43
5 By 21 Jac. 1. c. 7. drunkards ſhall forfeit 5*s.* 467, 468
6 The puniſhment inflicted on repeated tippling. 468

DUCKING STOOL.

1 A common ſcold is puniſhable by the ducking ſtool. 365

DUEL.—*Vide Challenge. Affray.*

1 If two perſons meet and fight in cool blood upon a precedent quarrel, and one is killed, the other is guilty of murder. 122 ſ. 21
2 And it is no excuſe that the deceaſed ſtruck firſt; or that the killer had often declined to meet him; and was only prevailed upon by his importunity; or that he only intended to vindicate his reputation; or that he only meant to diſarm his adverſary. *ibid.*
3 So, if two quarrel and appoint a diſtant time to fight, as from night to morning, or from morning to the afternoon, it may reaſonably be preſumed the blood was cooled in the interval. ſ. 22
4 And the ſame conſtruction ſhall be made upon a ſudden quarrel, if it appear that either of the parties was maſter of his temper at the time.
5 And not only the principals, but the ſecond to the killer alſo is guilty of murder. 124 ſ. 31
6 But *it ſeems* that the ſecond to the perſon killed *ſhould yet* be involved in his guilt. *ibid.*
7 And barely to challenge to a duel, by letters, words, or provoking language, or

or to be the meſſenger thereof, is a very high miſdemeanor. *Page* 266 ſ. 3

8 By 9 Ann. c. 14. ſ. 8. to challenge or provoke another to fight, on account of money won at play, is forfeiture of goods and impriſonment 2 years. 266

DURESS.

1 In what caſes it will exempt from the guilt of treaſon. 54, ſ. 24 (N) 3

DUTIES.—*Vide Smuggling. Permits.*

E

EAR.

1 BY 5 & 6 Edw. 6. c. 4. to ſtrike with a weapon in a church or church yard, is loſs of an ear, &c. 271

2 By 2 and 3 Edw. 6. c. 15. againſt combinations among victuallers, &c. the offender ſhall loſe an ear, &c. &c. 481

3 Cutting off a man's ear is not mayhem by the common law. 175 ſ. 2

4 But by 22 and 23. Car. 2. c. 1. if done with intent to maim or diſfigure the perſon, it is felony without clergy. 176 ſ. 4

5 By 37 Hen. 8. c. 6. if a man ſhall maliciouſly cut off the ear of another, he ſhall forfeit treble damages and 10*l.* *ibid.* ſ. 7.

6 By 5 Eliz. c. 14. againſt forgery of deeds relating to real eſtates, the offender ſhall have both his ears cut off, and for any forgery relating to a term of years, &c. he ſhall loſe one ear, &c. 339, 340

EASEMENT.

1 An eaſement as a right or way or the like, is not that ſort of poſſeſſion which is within the ſtatutes againſt forcible entries. *Page* 282

EAVES DROPPERS.

1 Eaves droppers are ſuch as liſten under windows, or the eaves of a houſe, to hearken after diſcourſe, and thereupon to frame ſlanderous and miſchievous tales to the common nuiſance, are preſentable to the leets, indictable at ſeſſions, and puniſhable by fine and finding ſurety for good behaviour. 262 ſ. 4

ECCLESIASTICAL.

1 A force done to eccleſiaſtical poſſeſſions, as churches, vicarage houſes, &c. is as much within the ſtatutes, againſt forcible entries, as if it were done to any temporal inheritance. 281 ſ. 31

2 All perſons eccleſiaſtical or temporal, are liable to puniſhment for high treaſon. 50 ſ. 4

3 The juriſdiction of the eccleſiaſtical court is ſaved by the ſtatute againſt tippling. 468 ſ. 42

4 So alſo it is ſaved by 5 Eliz. c. 9. againſt perjury and ſubornation. 327 ſ. 15

5 The 1 Eliz. c. 2. againſt miniſters not uſing the common prayer, alſo ſerves the juriſdiction of the eccleſiaſtical court. 14 ſ. 4

6 The 5 Eliz. c. 14. againſt forging deeds, wills, &c. ſhall not extend to any officers of the eccleſiaſtical court, who ſhall officially ſet his name to any ſuch writing, &c. 341

7 The offices of chancellor, regiſter, and commiſſary in eccleſiaſtical courts are within 12 Rich. 2. c. 2. againſt buying offices. 313 ſ. 4

8 How far ſuits in the eccleſiaſtical courts are within the 16 Rich. 2. c. 5. which puts all thoſe out of the king's protection who ſhall ſue out proceſs in the court of Rome *or elſewhere.* 80 ſ. 18, 19

9 In

9 In proceedings in the eccleſiaſtical court againſt hereticks, the appeal is to hig her ſpiritual courts, and not to thoſe of common law for a prohibition. *Page* 7 ſ. 9
10 In what caſes the eccleſiaſtical courts may be prohibited from proceeding on 1 Eliz. c. 2. for abſence from church. 19 ſ. 1
11 The juriſdiction of the eccleſiaſtical court over the offence of hereſy 6, 7
12 A ſuit in the eccleſiaſtical court is not within the ſtatute againſt maintenance. 545 ſ. 46
13 How far an affirmative ſtatute ſaving the juriſdiction of the eccleſiaſtical courts, leaves them open to inflict ſpiritual penalties on offenders. 14 ſ. 4

EDUCATION.—*Schools.*

1 By 1 Jac. 1. c. 4. to ſend any child abroad, for the purpoſe of being educated in the Popiſh religion, incurs a penalty of 100l 42 ſ. 1
2 And the perſons ſo ſent ſhall be diſabled to inherit, &c. *ibid.*
3 By 3 Jac. 1. c. 5. if the children of any Engliſh ſubject not being mariners, &c. &c. ſhall be ſent abroad to prevent their good education in England, they ſhall be diſabled, &c. unleſs they take the oath of obedience, &c. and the perſon ſending ſuch child ſhall forfeit 100*l.* 43
4 By 3 Car. 1. c. 2. if any perſon ſhall go abroad to be ſtrengthened in the Popiſh religion, they ſhall forfeit all goods, hereditaments, &c. &c. 43 ſ. 3

EFFUGAVIT.

1 In what caſe neceſſary in an indictment for larceny. 134. ſ. 2

EGGS.

1 Larceny may be committed by taking the eggs of any ſwans *marked and pinioned.* 144 ſ. 27
2 But by 1 Henry 7. c. 17. a leſſer puniſhment is appointed for this offence. *ibid.*
3 And there is no doubt but that the taking the eggs of ducks, hens, &c. is felony. *Page* 144. ſ. 28

EGYPTIANS.

1 Of the age of 13 years remaining in England one month forfeit 40l. 198 c. 54
2 Perſons pretending to be Egyptians deemed rogues and vagabonds. *ibid.*

ELECTION.—*Vide Bribery.*

1 If a ſtatute ordain a forfeiture, or impriſonment, at the election of the party, *quere* if the party die within the time limited for the payment, whether the forfeiture be diſcharged. 14 ſ. 6
2 It is in the election of the crown to either proceed upon the old ſtatutes which make purchaſing *bulls* from Rome high treaſon, or upon 13 Eliz. c. 2. which reduced the offence to *præmunire.* 79 ſ. 13
3 So alſo government may proceed againſt *nonjurors* either on the ſtatutes of *præmunire* or on the modern and milder ſtatutes. 96 ſ. 5
4 By 13 Car. 2. c. 1. members of corporations muſt have received the ſacrament within one year before their election. 15
5 But by 5 Geo. 1. c. 6. ſuch election is good notwithſtanding the omiſſion of receiving the ſacrament. 15, 16
6 By 11 Geo. 1. *the oaths* ſhall be taken before the perſon who preſides at the election of corporate officers. 16
7 To refuſe to elect the perſon nominated by the king to a biſhoprick *is præmunire.* 80 ſ. 22
8 If either of the univerſities neglect to elect a member in the place of one diſqualified by not taking the oath, &c. the king may appoint. 98 ſ. 9
9 In what manner ſurveyors of the highways ſhall be elected. 389

ELOPEMENT.

1 By 4 and 5 Phil. and Mary, c. 8. whoever above the age of 14 ſhall induce a woman child of 16 years unmarried to elope from and againſt the conſent of her guardians, ſhall ſuffer two years impriſonment and fine at diſcretion. *Page* 172 ſ. 10

2 And if the offender deflower or marry her, five years impriſonment and fine as before. *ibid.*

3 And if any female above 12 ſhall conſent to unlawful matrimony, ſhe ſhall forfeit all her lands to the next of kin during her life. 172, 173

4 This forfeiture extends as well to the infant who conſents, as to the huſband who takes 173 (N) 2

5 The marriage muſt be *clandeſtine* and to the diſparagement of the heireſs. *ibid.*

6 If the guardian once conſents he cannot retract. *ibid.*

7 A baſtard under the care of her putative father is within this act. *ibid.*

8 The offence is within the juriſdiction of the King's Bench. *ibid.*

9 And the court will grant an information againſt the offender, *ibid.*

ELM.—*Vide Trees.*

EMBEZZLEMENT.

1 By 31 Eliz. c. 4. if any perſon having the charge of the king's ſtores, ſhall embezzle the ſame to the value of 20s. he ſhall be guilty of felony. 75 ſ. 18

2 By 22 Car. 2. c. 5. the benefit of clergy is taken from this offence. *ibid.* (N)

3 By 7 Jac. 1. c. 7. if any manufacturer of wool, &c. ſhall embezzle any wool or yarn delivered to him to work he ſhall be whipped, &c. &c 139. ſ. 17

4 By 17 Geo. 3. c. 56. how ſervants in the hat, woollen, linnen, fuſtian, cotton, iron, leather, fur, hemp, flax, mohair, ſilk or dying manufactures, embezzling the materials entruſted to their care ſhall be puniſhed. 140

5 By 3 and 4 W. & M. c. 9. if a perſon ſhall take away the furnitu of their lodging, with intent to em bezzle it, they ſhall ſuffer as in ca of felony. *Page* 137 ſ. 1

6 By 21 Hen. 8. c. 7. if any ſerva ſhall embezzle his maſter's jewel money, goods, &c. intruſted to h care to the amount of 40s. he ſha be guilty of felony. (*Vide Larceny* 138 ſ. 1

7 By 15 Geo. 2. c. 13. if any offic of the bank ſhall embezzle any pa of the property entruſted to his car he ſhall ſuffer without benefit clergy. 139, 14

8 By 5 Geo, 3. c. 25. ſervants of th poſt offices embezzling any letter packet, or bag of letters, contain ing any ſecurity for money, ſha ſuffer death without clergy. 14

9 For the offence of embezzling nava ſtores. (*Vide Naval Stores.*) 56

10 What puniſhment ſhall be inflict ed for embezzling of records. (*Vi Records.*) 177 c. 4

EMBRACERY.

1 Every *corrupt* attempt to influence jury in their verdict, although n verdict is given, is embracery. 54 c. 8

2 Even a ſtranger ſhall not deſire a ju ror *to appear and act conſcientiouſly* 54

3 Giving money to a juror after ver dict *favours* of this offence. ſ.

4 But not if it be their uſual allowance *ibi*

5 Giving money *to another* to diſtribut among *them*, is of the nature of em bracery, although not diſtributed ſ.

6 Nor ſhall even a juror *practiſe* on hi companions. *ibid.*

7 Procuring to be a juror for partia purpoſes, is criminal. *ibid.*

8 It is altogether unlawful for an perſon to tamper with a jury. ſ. 5

9 But whoever may juſtify any other act of maintenance may deſire a ju ror to appear. ſ. 6

The offender is liable to either an indictment or an action. *Page* 550 f. 7

And if the party prejudiced is ignorant of the embracery ſo as to prevent his challenging the juror, it is a good cauſe to ſet aſide the verdict. *ibid.*

By 5 Ed. 3. c. 10. the juror corrupted ſhall be diſqualified and impriſoned, and *the court* are empowered to enquire of the offence. f. 8.

By 34 Ed. 3. c. 8. the parties who ſhall ſue embraced jurors, ſhall be heard immediately by *the court*, and the juror put to plead *maintenant*, &c. f. 9

By 38 Ed. 3. c. 12. every juror or embraceror attempted upon the above ſtatute, ſhall pay *ten times as much* as he receives; half to him that will ſue, &c. or be impriſoned for one year. 551 f. 10

What may be pleaded in *bar*, or *abatement* to a *decies tantum*. f. 11

In *decies tantum* it muſt be ſhewn that the money was given to the juror. f. 12

The plaintiff muſt ſhew how much the juror received. f. 13

Money given after the verdict is not within the act, unleſs in conſequence of previous agreement. f. 14

And it is immaterial whether a verdict was given or not. f. 15

All the jurors or embracerors may be joined in one action, but they ought to plead ſeverally. 552 f. 16

They ought ſpecially to deny taking the money. f. 17

The proſecutors half of the fine ſhall be paid before the king's. f. 18

A huſband alone may bring *decies tantum* for embracery, where he and his wife were parties. f. 19

The difference between money given for land, and the real worth of the land ſhall be conſidered as money received. f. 20

This action may be barred by the king's releaſe, but not by the parties. f. 21

How the party may declare in *decies tantum*. *ibid.*

Outlawry does not lie in this action. f. 22

What proceſs does lie. *ibid.*

No *capias* into a foreign county lies againſt *the jurors*. *Page* 552 f. 22

EMISSION.

In ſodomy, there muſt be evidence of emiſſion as well as penetration; but emiſſion is *prima facie* evidence of penetration. 9, 10

No aſſault, with intent to raviſh, can amount to a rape, unleſs it proceed to ſome degree of penetration, and alſo of emiſſion; but evidence of emiſſion is *prima facie* evidence of penetration. 169

ENDS of BRIDGES.

How the roads at the ends of bridges ſhall be repaired. 448, 451

ENEMY.—*Vide Treaſon.*

No perſon can be guilty of an affray by aſſembling and arming, in order to oppoſe enemies. 268

If a man be adherent to the king's enemies in his realm, he is guilty of high treaſon. 50 f. 3

Alien enemies, invading the kingdom in a hoſtile manner, are to be dealt with by martial law. 51 f. 6

What ſhall be ſaid to be an adherence to the king's enemies. 55 f. 28

How far intercepted letters to the enemy are proofs of high treaſon. 56 (N) 7

By 22 Geo. 2. c. 33. to deſtroy any ſhip, &c. not appertaining to the enemy, &c. is death, on conviction by a court martial. 76

ENGLISH COUNTY.

Salop is conſidered as the next adjoining Engliſh county to Wales. 220, 221

ENGINES.—*Vide High Treaſon.*

By 8 and 9 Will. 3. c. 36. whoever ſhall make or mend any engine, not

not of common uſe in any trade, but contrived for marking of money round the edges with letters, &c. Or any cutting engine, for cutting round blanks, by force of a ſcrew, out of flatted bars, &c. ſhall be guilty of high treaſon. *Page* 64
2 If any ſuch engine ſhall be elſewhere found than in the cuſtody of the king's minters, they may be ſeiſed, carried before a juſtice, and deſtroyed 65
3 By 9 Geo. 3. c. 29. to burn, deſtroy, or damage, any engine for drawing water from collieries, is tranſportation for ſeven years. 238 ſ. 4
4 How, and by what authority, weighing engines, for turnpike roads, ſhall be erected 428

ENGLESHCHIRE.

1 Anciently murder ſignified privately killing; therefore CANUTE paſſed a law for the preſervation of his *Danes*, that the town where the fact happened, ſhould be *amerced*, unleſs it was proved that the perſon ſlain was an *Engliſhman*, and this proof was called *Engliſhchire*. 114 ſ. 22. 117 ſ. 1
2 This law aboliſhed by 14 Ed. 3. c. 4. *ibid.* ſ. 2

ENQUEST.—*Vide Inquiſition, Armour.*

ENGROSSING.

1 Is enhancing, by any means, the prices of merchandize and victuals. 479. ſ. 1 and 2
2 Importers of merchandiſe may ſell in groſs; but no perſons can buy and ſell in groſs within the realm. ſ. 3
3 A *bare* intent to ſell an engroſſed commodity at the unreaſonable price is indictable at common law whether any part be ſold or not. ſ. 3
4 Corn cannot be ſold in the ſheaf. ſ. 4
5 How this offence was anciently puniſhed. ſ. 5
6 At this day offenders are liable to fine and impriſonment. 480
7 By 23 Edw. 3. c. 6. all dealers in victuals ſhall ſell the ſame for a reaſonable price on pain of double value. 480 ſ. 6
8 Butchers ſelling unwholſome meat how puniſhed. 480
9 Reſtrained from killing beaſts walled towns. *Page*
10 When calves ſhall be killed, *i*
11 Aliens in amity may ſell the victu they import.
12 Penalty for preventing them. *i*
13 By 25 Hen. 8. c. 2. the chancel and other great officers of ſtate m upon complaint of their being hanced, fix and regulate the p of victuals.
14 By 2 & 3 Edw. 6. c. 15. none ſh conſpire not to ſell victuals, not do work but at certain pric and thoſe who ſhall ſo conſpire leave work unfiniſhed, or only to certain work in a day; or, at c tain hours, &c. they ſhall forf &c. ſ.
15 And if ſuch conſpiracy ſhall formed by the major part of any the companies mentioned, their corporation ſhall be thereby diſſol ed. *ib*
16 By 2 Geo. 3. c. 14. no victualler publican ſhall be ſued for advanci the price of malt liquors in a re ſonable degree. 48
17 No brewer ſhall mix ſtrong be or worts with ſmall beer or ſm worts, on pain of 50*l*. *ibi*
18 The ſtatutes againſt foreſtalling, i groſſing and regrating repealed ſ.
19 Whoever ſhall buy victuals *in the way* to market, is a foreſtaller. ſ.
20 Whoever ſhall buy victuals and ſe them again in the ſame market, within 4 miles thereof is a regrato ſ.
21 Whoever ſhall get into his hand any victual, grown or produced b another is an ingroſſer. ſ.
22 Salt is comprehended under th word victuals. ſ.
23 But hops, malt, apples, pears, &c are not. ſ.
24 Nor can a perſon engroſs by buying corn in order to make ſtarch of it or to make malt or meal. ſ. 1
25 In what manner the indictment o information ſhould be framed. ſ. 19 20, 2
26 The puniſhment by ſtatute, for this offence. ſ. 2

ENLISTING.—*Vide Soldier.*

By 9 Geo. a. c. 30. whoever ſhall enliſt himſelf, or procure another to enliſt, or hire another with intent to cauſe him to enliſt, or procure another to embark in order to be enliſted to ſerve any foreign prince without licence, &c. although no enliſting money be paid, is felony without clergy unleſs within 14 days the offender diſcover his ſeducer. *Page* 74 ſ. 16

1 By 29 Geo. 2. c. 17. to enliſt into the military ſervice of the French king as an officer without licence, is felony without clergy. 75

2 To enliſt as a commiſſion officer into the Scotch brigade in the Dutch ſervice is a forfeiture of 500l. *ibid.*

ENTICING. — *Vide Artificers.—Soldiers.*

ENTERTAINMENT.—*Plays.—Lord's Day.*

ENTRY.—*Forcible Entry.—Burglary.*

1 The words *fregit & intravit* are both eſſentially neceſſary in an indictment for burglary; and both muſt be ſatisfied. 160

2 Any the leaſt *entry*, either with the whole or with but part of the body, or with any inſtrument or weapon will ſatisfy the word *intravit*; as if one do but put his foot over the threſhold, or his hand, or a hook or a piſtol within the window. 161

3 But the entry made, or *thing* introduced, muſt be for the purpoſe of committing felony. 162

4 Therefore an entry made with an inſtrument for the purpoſe of breaking, and not for the felonious purpoſe, is not ſuch an *entry* as will ſatisfy the word *intravit*. *ibid.* (N) 1

5 An actual *entry* in all caſes not neceſſary. ſ. 8.

6 An *entry* obtained by fraud or colluſion is ſufficient. *Page* ſ. 9

7 What acts of violence ſhall conſtitute *a forcible entry* within the ſtatutes of forcible entry and detainer. 276 to 280

8 The manner in which the copy right of authors muſt be entered at Stationer's Hall, in order to protect their property in the copy. 476

ENTAIL.

1 The forfeiture of all lands and tenements by 16 Rich. 2. c. 5. *for præmunire*, extends not to land entailed after the death of the offender. 86 ſ. 48

EQUITY.

1 Whoever hath an equitable intereſt in lands or goods may lawfully maintain another in an action relating thereto, 539. ſ. 17

ERASURE.

1 Eraſing the name of one man out of a patent, and putting in that of another, or any artificial removing of the true writing altogether new, &c. from any inſtrument to which the ſeal is affixed, is not within the ſtatute of treaſon's as counterfeiting the king's great and privy ſeal. 61. ſ. 52

2 By 11 Geo. 1. c. 9. to eraſe or alter a bank-note or any indorſement, &c. thereon, is felony without clergy. 205

3 And to obliterate the red mark uſually made on payment is an eraſure. *ibid.*

4 It is not forgery under the 5 Eliz. to eraſe the word *libris* from a bond and inſert *marcis* inſtead thereof. 337. ſ. 4

ERECTION.—*Vide Nuiſance.*

ERROR.

1 What ſpecies of error may properly be called heretical. *Page* 6. ſ. 2
2 A writ of error cannot be brought on any record which is not a judgment. 24. ſ. 23
3 Error, tending to the king's prejudice may be aſſigned on a conviction for not coming to church; but no other error. 25. ſ. 29

ESTREAT.—*Vide Recognizance.*

ESCAPE.—*Vide Homicide. Execution. Quarantine.*

1 An officer may juſtify homicide of a priſoner who reſiſts, being retaken upon an eſcape without giving back at all. 107. ſ. 17
2 Of homicide where the direct deſign is to eſcape from an arreſt. 129. ſ. 55
3 If a bankrupt is likely to eſcape, he may be committed. 204. (N) 1
4 By 26 Geo. 2. c. 26. if any perſon ſhall eſcape out of the houſe, lazaret, or place appointed for the performance of *quarantine*, he ſhall ſuffer death without clergy. 242. ſ. 5.

ETCHING.—*Vide Forgery.*

1 By 13 Geo. 3. c. 79. to etch, &c. in mezzotinto, upon any material, any bill containing the words BANK OF ENGLAND, or BANK POST BILL, &c. is impriſonment for ſix months. 206
2 By 8 Geo. 2. c. 13. whoever ſhall *etch*, &c. in *mezzotinto* or *chiaro obſcuro* any original print, ſhall have the ſole right of printing and reprinting the ſame, &c. 477
3 By 23 Geo. 3. c. 30. to etch, &c. the words EXCISE OFFICE in any paper for granting permits, is felony without clergy. 565

EVASION.

1 No woman, by uſing fraudulent the proceſs of the law, in order obtain the goods of another, ſh excuſe the party from the guilt larceny *Page* 136 ſ.
2 Nor ſhall the evaſion of having be entruſted with the goods avail, they were originally obtained wit felonious intention. *ibid.* ſ.
3 Nor will the obtaining a feloni entrance into a houſe upon preten of buſineſs evade the guilt of bu glary. 161. ſ.
4 So alſo, in libels, no artful meth of appearing to conceal the inten ed defamation, by initial letters, & ſhall evade the puniſhment. 353. ſ.
5 So alſo if *A.* tell *B.* that he will gi him a pot of ale to ſtrike him; a thereupon *A.* kills *B.*—this ſhall n evade the guilt of murder; if it a pears to have been deſigned. 123.
6 In like manner if on a challenge refuſes to meet *B.* but tells him ſhall go next day to ſuch a plac and they there meet and fight, th ſhall not evade the law, if dea enſues. ſ. 2

EVIDENCE.—*Vide Witneſs.*

1 Opening the evidence to the jury, favour of one of the parties, is fai to be a ſpecies of maintenance. 53 ſ.
2 In *ſe defendendo*, and manſlaughte the ſpecial matter *ſhall* be given evidence on the general iſſue. 105. ſ.
3 So alſo in homicide by miſadventur 11
4 A borrower ſhall not be admitted a evidence againſt an *uſurer* until h has paid off the whole debt. 533 ſ. 2
5 But the borrower is a good evidenc to prove the repayment of th money

money and alſo the uſurious contract. *Page* 533 (N)
6 So he may give evidence, though the money is not repaid, if the queſtion neither effects the debt nor avoids the contract. *ibid.*
7 Where the intereſt of a witneſs is doubtful, the objection ſhall only go to the *credit* of his evidence, and not to his competency. *ibid.*
8 Entrance for *goods* will not ſupport an information for uſury, for the loan of *money*. 534
9 To diſſuade, or endeavour to diſſuade, a perſon from giving evidence againſt a perſon indicted, is a contempt of court. 90 ſ. 15
10 Refuſing to give evidence before the grand jury, concerning a crime, is a contempt of the king's prerogative, for which the court may impoſe an immediate fine. 91 ſ. 4
11 What ſhall be evidence of a perſon's being a truſtee for a turnpike road. 424
12 Upon what evidence convictions for offences againſt the highway and turnpike acts, ſhall be made. 440
13 How far the exciſeman's book ſhall be evidence of a perſon being an ale-houſe-keeper. 458

EVIL.—*Infancy. Diſcretion.*

1 The period at which the human mind is preſumed capable of diſtinguiſhing between good and evil. 1 (N) 1

EVIL SPIRITS—*Witchcraft. Charmers. Sorcery.*

EXCISE.

1 A man may be bound to good behaviour for accuſing juſtices of ignorance of the exciſe laws. 262 (N) 1
2 The exciſeman's book ſhall be proof of a perſon's being an alehouſe keeper. 458
3 How retailers of exciſeable liquors ſhall be licenſed. 461, &c.
4 How licences ſhall be granted within the limits of the exciſe office in London. *Page* 462
5 Commiſſioners of the exciſe empowered to mitigate penalties. 463

EXCHANGE.—*Vide Bills.*

EXCUSE.

1 In homicide it is no excuſe for the ſlayer that the deceaſed might have recovered if he had not neglected to take care of himſelf. 119 ſ. 10
2 If a perſon be ſick for part of the time contained in an information, on 23 Eliz. c. 1. for 20*l.* for every month's abſence from church, he ſhall not be excuſed on account thereof, if it be proved he was a recuſant. 21 ſ. 10
3 A perſon in holy orders is not thereby excuſed from the duties impoſed by the highway act. 377 ſ. 15
4 Making a winding paſſage through logs laid on a highway, will not excuſe from the penalty of the nuiſance
5 It is no excuſe from the guilt of defamation, that the perſon only read the libel in the jeſt. 356 ſ. 14
5 In what caſes juſtices are excuſed for not executing the ſtatute 13 Hen. 4. c. 7, againſt rioters. 307
7 The ſtat. 23 Eliz. c. 1. inflicting 20*l.* for every month's abſence from church, does not excuſe the offender from the forfeiture of 12*d.* given by 1 Eliz. c. 2. for the abſence of one Sunday. 20 ſ. 7
8 All excuſes from the charge of repairing decayed bridges, by reaſon of privileges of exemption, whether derived from charter or act of parliament, are taken away, 22 Hen. 8. c. 5. 449 ſ. 18

EXCHEQUER.

1 On 2 Ed. 3. againſt riding armed, the juſtices ought to record their proceedings,

ceedings, and *where he proceeds ex officio* certify the ſame into the *Exchequer*. *Page* 267
2 How far the ſtatute of monopolies extends to the Exchequer. 473

EXCUSABLE HOMICIDE.

1 Excuſable homicide is either *per infortunium* or *ſe defendendo*. 111
2 PER INFORTUNIUM is by miſadventure where a man, in doing a lawful act, without an injurious intention, happens to kill another ſ. 1
3 As where the head of a hatchet flies off and kills. ſ. 2
4 Or where a horſe whipped by a third perſon, runs over a child. ſ. 3
5 or where a workman, *after proper notice*, flings timber from a houſe, &c. ſ. 4
6 Or where death enſues from *moderate* correction, &c. ſ. 5
7 Or where an arrow glances and happens to kill. 112
8 Or where death happens in playing at foot ball. ſ. 7
9 Or where one kills another in fighting at *barriers*, by the king's command. ſ. 8
10 Or where the gun of a ſtranger, attending a game keeper, who is warding off poachers from the ground of a third perſon and the gun accidentally goes off and kills one of the poachers, for the duty of the game-keeper will authorize the treſpaſs of the ſtranger. *ibid.*
11 SE DEFENDENDO is where one who has no other poſſible means of ſaving his life from the force of a ſudden attack, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 113 ſ. 13
12 And he who, on an aſſault, retreats as far as ſafety will permit, and then kills his aſſailant, is judged to act upon unavoidable neceſſity. ſ. 14
13 So alſo, if his ſituation be ſuch, either from the violence of the aſſault, or from the nature of the place, that he cannot retreat without endangering his life. *ibid.*
14 And though he wound the aſſailant in retreating, yet if he gave him a mortal wound, till his further retreat is ſtopped, it is only *ſe defendendo*. *Page* 113 ſ. 1
15 An officer reſiſted in the execution of his duty, and a private perſon feloniouſly attacked on the highway may juſtify the killing without giving back at all. ſ. 1
16 And it *is ſaid*, tho' even he who gives another the firſt blow, *without malice*, and afterwards do what he can to avoid killing him, is not guilty of felony,—*Sed quære* ſ. 1
17 Homicide *per infortunium* and *ſe defendendo*, are not felonies; were always bailable by *the King's Bench* &c. and never puniſhable with the loſs of life. 11
18 They are not bailable by *juſtices of peace*, but the offenders muſt be committed till the next aſſizes. ſ. 2
19 Anciently they might have been *mainprized* by the writ *de odio et atia* but this is obſolete. 114, 11
20 Theſe offences cannot be juſtified by ſpecial pleading but the ſpecial matter may be given in evidence on *Not Guilty*. ſ. 2
21 If the offender be acquitted of the indictment, or found not guilty on a ſpecial verdict, he ſhall be diſcharged upon bail, and forfeit his goods. *ibid.*
22 But that by removing the record by *certiorari*, into Chancery, he ſhall be pardoned of courſe, without waiting for the king's warrant. *ibid.*

EXCOMMUNICATION.

1 By the common law, an excommunicated heretic may be impriſoned by the writ *excommunicato capiendo* 7. ſ. 1
2 By 5 & 6 Edw. 6. c. 4. whoever ſhall ſmite, or lay violent hands upon another in a church or church yard ſhall *ipſo facto* be deemed excommunicate. 271. ſ. 2
3 And whoever ſhall maliciouſly ſtrike another with any weapon in a church or church yard, or draw the ſame with

with intent ſo to ſtrike, ſhall, on conviction as the ſtatute directs, have one of his ears cut off, and ſtand *ipſo facto* excommunicated. *Page* 272 ſ. 26
4 But notwithſtanding the words *ipſo facto*, there muſt be either a precedent conviction at law, tranſmitted to the ordinary, or elſe the excommunication muſt be declared in the ſpiritual court, on *proof of the offence* there. 272
5 By 3 Jac. 1. c. 1. every popiſh recuſant convict ſhall ſtand diſabled, &c. as perſons excommunicated, to all intents and purpoſes. 32 ſ. 1
6 But they cannot be apprehended upon *excommunicato capiendo*. 33 ſ. 6
7 Excommunication muſt always appear judicially, otherwiſe there can be no abſolution. 272

EXECUTION.

1 On the conviction of an infant, within the years of diſcretion, for a capital offence, the judges will, in diſcretion, reſpite the execution in order to procure a pardon. 3 ſ. 8
2 If the common Pleas, on an appeal of death, or juſtices of the peace on an indictment of treaſon, award execution, and the execution is accordingly done, the judges who award, and the officer who executes, are guilty of felony. 105 ſ. 5
3 But in treſpaſs, if the juſtices of peace arraign for felony, and award execution, the juſtice only, and not the officer is guilty. 106
4 Execution muſt be done by the lawful officer. ſ. 7
5 If a private perſon do execution, or if the proper officer himſelf do it without lawful command, it is felony. ſ. 9
6 The execution muſt be purſuant of, and warranted by the judgment; therefore if a ſheriff behead a man where that is no part of the ſentence, he is guilty of felony. ſ. 10
7 The king cannot vary the execution, ſo as to aggravate the puniſhment. (N) 1
8 How homicide, in execution of public juſtice, is juſtified. *Page* 105
9 If a convict becomes *non compos* after conviction, he ſhall not be executed. 2 ſ. 3

EXEMPTION.

1 Perſons in holy orders are not exempted from contributing to the repair of the highways, in reſpect of their ſpiritual poſſeſſions.
2 Carriages employed in huſbandry are exempted from being weighed at the engines on turnpike roads, 430 ſ. 21
3 What other kind of carriages are exempted from the payment of tolls on turnpike roads. 434, 435

EXERCISE.

1 To exerciſe the juriſdiction of a ſuffragan, without the appointment of the biſhop of the dioceſe, is præmunire. 80 ſ. 21

EXERCISING a TRADE.—*Vide Apprenticeſhip. Trade.*

EXILE.—*Vide Tranſportation.*

EX OFFICIO —— *Affrays. Riding Armed.*

EXPORTATION.—*Vide Smuggling.*

1 By ſome old ſtatutes the exportation of wool was made felony. 195
2 By 7 & 8 Will. 3. c. 28. it is reduced to a miſdemeanor. *ibid.*
3 By 8 Eliz. c. 3. no perſon ſhall export rams, ſheep, or lambs, alive, on pain, their aiders, &c. of forfeiture of goods, impriſonment for a year, loſs of land, &c. for the firſt offence. For the ſecond the offender ſhall be guilty of felony. ſ. 2
4 By

4 By 12 Car. 2. c. 32. whoever ſhall export any ſheep or wool, or load the ſame, &c. for ſuch purpoſe, ſhall forfeit the goods, and 20*s.* for every ſheep, and 3*s.* for every pound of wool. *Page* 195 ſ. 3
5 How the owners of the ſhip, the maſters and mariners, and the merchant, ſhall be puniſhed. *ibid.*
6 By 9 & 10 Will. 3. c. 40. proſecutions may be commenced by the informed within one, and by the crown within three years. 195, 196
7 By 7 & 8 Will. 3. c. 28. whoever ſhall aid in the exportation of wool ſhall ſuffer three years impriſonment, and pay treble the value, the inhabitants, &c. are liable to, &c. 196 ſ. 4
8 By 4 Geo. 1. c. 11. whoever ſhall be in priſon for the exportation of wool, or for aiding therein, and ſhall refuſe to plead to the proſecution within one term, judgment ſhall be entered; and in caſe the penalty be not paid in three months, the offender ſhall be tranſported. ſ. 5
9 By 12 Geo. 2. c. 21. whoever ſhall bribe, or offer, or promiſe ſo to do, to any revenue officer, to connive at the tranſportation or concealment of wool, ſhall forfeit 300*l.* ſ. 6
10 And if any officer, or his aſſiſtant, ſhall be obſtructed in ſeizing any wool, the offenders, their aiders, or any other perſon, *being armed and diſguiſed*; or who ſhall attempt to reſcue any wool, ſeized by ſuch officers, ſhall be tranſported for ſeven years. ſ. 6
11 By 19 Geo. 2. c. 34. if any perſons armed, to the number of three, ſhall be aſſembled to aſſiſt in the illegal exportation of wool, or ſhall reſcue, &c. or if any perſon ſhall have his face diſguiſed, when paſſing with ſuch goods, or ſhall obſtruct the ſeizing, &c. he ſhall be guilty of felony without clergy. 196, 197
12 Formerly the exportation of *all coin and bullion* was prohibited. 72 ſ. 6
13 By 15 Car. 2. c. 7. any perſon may export any *foreign coin* or bullion. *ibid.*
14 But by 6 & 7 Will. 3. c. 17. whoever ſhall make ingots of ſilver, in imitation of the Spaniſh, ſhall forfeit 500*l.* *Page* 72 ſ.
15 And no perſon ſhall export any molten ſilver, unleſs ſtamped at *Goldſmith's Hall*, under a certificate, that oath was made by the owner and one witneſs, that the ſame is lawful ſilver, and that no part thereof was the coin, or clipping thereof, or the plate of the kingdom. 72, 7
16 Officers are authorized to ſeize all ſilver without ſuch mark and certificate. 73 ſ.
17 If any broker, not a goldſmith or refiner, ſhall buy or ſell any bullion or molten ſilver, he ſhall be impriſoned ſix months. 73 ſ.
18 The owner ſhall prove the bullion to be foreign if a doubt ariſe, ſ. 10
19 No bullion to be entered or ſhipped, but in the name of the true owner, proprietor, or importer, on pain of forfeiture. *ibid.*
20 By 7 and 8 Will. 3. c. 19. no perſon ſhall ſhip any bullion or molten ſilver whatſoever, unleſs on a certificate from the Lord Mayor and Aldermen of the city of London, on oath having been made before the court as aforeſaid. (*Vide Supra*, No.) ſ. 11
21 The ſaid court ſhall certify the ſame *circumſtantially* to the commiſſioners of the cuſtoms before any cocquet, &c. ſhall be granted, *ibid.*
22 The penalties on the owner, captain, and cocquet officer, for acting contrary this act. *ibid.*
23 For the acts relating to the exportation of corn. 486 (N) 1
24 By 2 Geo. 3. c. 14. whoever ſhall cauſe any ale or beer, exported as merchandiſe, to be unſhipped, or relanded, &c. they ſhall forfeit the ſame, and 5*l.* for every caſk. 513 ſ. 84
25 For the exportation of beef and pork. 520

EXPOSITION.

1 It is a general rule, that in doubtful caſes, the reaſon of the common law ought

ought to govern the construction of a ſtatute. *Page* 58 ſ. 39
2 An affirmative ſtatute ſaving a particular juriſdiction, ſhall be ſo conſtrued as not to abridge the powers of the juriſdiction ſaved. 14 ſ. 4
3 An affirmative ſubſequent ſtatute ſhall be conſtrued concurrent with a former ſtatute, with which it is conſiſtent. 26
4 In what caſes the meaning of a ſtatute ſhall controul the words. 201
5 Where a ſtatute ſhall be conſtrued by equity. 278
6 Where a ſtatute begins by naming inferior perſons, it ſhall not be taken to extend to ſuperiors. 177 ſ. 4
7 Where a ſtatute expreſſes what the law would have implied, the words of the ſtatute ſhall not operate. 20 ſ. 8. 33
8 A ſtatute taking away clergy from an offence, alters not the nature of it. 112. 151
9 Statutes for the preſervation of the public peace, ſhall be conſtrued liberally. 299

Vide Statute, Piracy, Indictment, Preamble.

EXTOL.

1 By 5 Eliz. c. 1. adviſedly and wittingly to extol and ſet forth the juriſdiction of the Pope is *præmunire*. 67

EXTORTION.

1 Is any oppreſſion, but eſpecially an officer obtaining money colourably, where none or not ſo much is due, or where it is not yet due. 316. c. 68
2 No fees ſhall be taken but of the king, by any officer concerned in the adminiſtration or execution of juſtice, &c. ſ. 2
3 A preſcription by a clerk of the market claiming fees for the view of weights and meaſures is void. *ibid*
4 The danger of oppreſſion from officers ancient fees, as the bar fee by a ſheriff, &c. which they claimed, and an enumeration of the ſtatutes by which their fees are now ſettled. 316. *Page* 317 (N) 1
5 Officers guilty of extortion who take other fees than they are allowed. *ibid.* ſ. 4
6 A promiſe to pay them more than they are intitled to take is void. *ibid.*
7 It is extortion to oblige an executor to prove a will twice over, and to take fees thereon; or to procure a gratuity to become bail for a priſoner; or to arreſt a man and procure a releaſe; or to obtain money from a priſoner by any colour of office. *ibid.* (N) 2
8 It is extortion for a miller to take more than is due by cuſtom; or for a commiſſary to take more than his right for abſolution; or a ferryman for ferrying; or to force an exorbitant price for places at a fair; or in an under ſheriff to refuſe execution of proceſs without his fees; or to take a bond for them, or for a coroner to refuſe a view. *ibid.*
9 Extortion, by the common law, is puniſhable with deprivation, fine, and impriſonment. And by the ſtatute of Weſtminſter, the offender ſhall yield twice as much as he takes. 318
10 The indictment or information muſt ſtate the fact particularly. *ibid.* (N) 3
11 The ſeſſions may try the indictment. *ibid.*
12 An action lies for the double value. *ibid.*
13 Defects cured by verdict, and the party will be forced to demur. *ibid.*
14 Proof of the ſmalleſt poſſible taking is ſufficient; for it is the taking and not the contract which conſtitutes the crime. *ibid.*
15 Aiders are principals, and the offence may be laid in any county. *ibid.*

EXTRA WEIGHT.

1 What additional toll ſhall be paid for extra weight on turnpike roads. 429

EYRE.

1 By the 25 Edw. 3. c. 2. it is high treaſon to ſlay the juſtices *in eyre* or juſtices of aſſize aſſigned to hear, &c. being in their places during their offices. *Page* 61

2 But not attempt to kill them, or the actual wounding unleſs death enſue, will amount to this crime. *ibid.*

P.

FACE BLACKED.—*Vide Smuggling.*

FAIRS.

1 BY 5 & 6 Edw. 6 c. 25. & 26 Geo. 2. c. 31. no perſon, except in fairs, ſhall keep an unlicenſed alehouſe. 455. ſ. 11

2 Thoſe who brew ale in fairs muſt give notice to the gaugers that it may be ſurveyed. *ibid.* (N)

3 This indulgence only extends to the place where the common fair is held. *ibid.*

4 By 5 & 6 Edw. 6. c. 9. to break open a booth or tent in any market or fair, the owner, his wife, &c. being therein, is felony without clergy.

5 By 27 Hen. 6. c. 5. no fair ſhall be held on the principal feſtivals, Good Friday, or any Sunday, except the fairs in harveſt. 4

FALL.—*Vide Deodand.—Homicide.*

FALSE DICE.—*Vide Dice.—Cheats.*

FALSE TOKENS.——*Vide Cheat. Deceit.*

1 By 33 Hen. 8. c. 1. falſely to obtain the property of another by means of any privy falſe token is a miſdemeanor. 344

2 What ſhall be conſidered a priv falſe token. *Page* 345. (N)

FALSE MONEY.—*Vide Coin.*

FALSE NEWS.

1 Spreading falſe news is an indictab offence. 9a. ſ.

FALSE OATH.—*Vide Perju*

FAME.

1 By 34 Edw. 3. c. 1. juſtices peace are impowered to reſtrain an to take *(inter alia)* of all them th be *not of good fame* ſufficient ſure for their good behaviour. 26

2 It has been thought that this mea only ſuch as are *defamed* and juſt ſuſpected of an intention to brea the peace. ſ.

3 But evil fame as properly includ perſons of ſcandalous behaviour other reſpects as thoſe who giv ſuſpicion of their readineſs to brea *the peace.* ibi

4 Therefore for thoſe cauſes of ſcan dal which give a man *a bad fame,* being *contra bonos mores* only, ma be found to his good behaviou ibi

5 And alſo all perſons whoſe miſbeha viour may reaſonably be intended t being them within the meaning o perſons of *evil fame,* the great lati tude of which leaves it to the judg ment of the magiſtrate. 26

6 A libel is any malicious defamation expreſſed in any manner ſo as to b generally underſtood. 352. c. 7

FARTHINGS.—*Vide Half-penny.*

1 It is not high treaſon to coin or coun terfeit braſs farthings. 62. ſ. 5

2 By 15 Geo. 2. c. 28. whoever ſha coin or counterfeit any braſs or cop per money called a half penny or far thing

thing, their aiders, &c. ſhall ſuffer 2 years impriſonment, and find ſureties for 2 years more. *Page* 71, 72
2 By 11 Geo. 3. c. 40. whoever ſhall coin or counterfeit a half-penny or a farthing, his aiders, &c. ſhall be guilty of felony. 72. ſ. 5
4 Whoever ſhall buy, ſell, take, receive or put off any counterfeit copper money not cut in pieces for lower than its nominal value ſhall be guilty of felony. *ibid.*
5 The houſes of ſuch counterfeiters may be ſearched. *ibid.*
6 Whoever ſhall alter (in the way mentioned) a farthing, with intent to make it *reſemble* a ſixpence, his aider, &c. ſhall be guilty of high treaſon. 65

FAST DAYS.

1 By 2 & 3 Edw. 6. c. 19. & 5 Eliz. c. 5. it is made penal to affirm that any eating of fiſh or forbearing of fleſh mentioned therein is neceſſary to ſalvation that it is the ſervice of God. 13. ſ. 7
2 By 27 Hen. 6. c. 5. no fair or market ſhall be held on the principal faſt days, except the fair Sundays in harveſt, on pain of forfeiting the goods expoſed to ſale. 11

FEES.—*Vide Extortion*

1 By 26 Geo. 2. c. 14. & 27 Geo. 2. c. 16. the fees of juſtices clerks are regulated.
2 By 23 Geo. 2. c. 26. ſ. 10. the fees of records out of the exchequer regulated.
3 By 3 Geo. 1. c. 13. ſ. 16. certain fees of ſheriffs are ſettled.

Fee SIMPLE and FEE TAIL.—*Forgery by* 5 *Eliz.*

1 The recuſant heir of a recuſant anceſtor has no remedy but by conforming to free his fee ſimple lands from the forfeiture incurred by his anceſtor's conviction, whether the lands were ſeiſed in the anceſtor's lifetime or not. *Page* 30. ſ. 56
2 But the fee-tail lands which the heir claims from the anceſtor is not chargeable after his death on any conviction by proclamation, &c. ſ. 57
3 Lands entailed are not within the ſtatute of *præmunire* after the death of the offender. 85. ſ. 48

FEAR.—*Vide Robbery.*

1 Larceny from the perſon by *putting in fear* is called robbery. 147
2 Money delivered in conſequence of an oath, compelled by fear is robbery. *ibid.* ſ. 1
3 Fear is the diſtinguiſhing ingredient between robbery and other larcenies. *ibid.* (N) 3
4 Therefore if the fear be exerted ſubſequent to the *taking*, it is larceny, but not robbery. *ibid.*
5 So where no fear is impreſſed for the purpoſe of obtaining the property. *ibid.*
6 But it is not neceſſary that the fact of actual fear ſhould either be laid in the indictment or proved upon the trial. 149 (N) 4
7 Proof of ſuch acts as may reaſonably be ſuppoſed to excite fear and apprehenſion in the human mind are ſufficient, if the party parts with his money under the influence of them. *ibid.*
8 For in *odium ſpoliatoris* the law will preſume fear where there appears a juſt ground for it. *ibid.*
9 How fear is properly expreſſed in an indictment. 150

FELONY.

1 Capital offences, by the common law, come generally under the title of felony; which ſignifies *quodlibet crimen felleo animo perpetratum.* 99 c. 25
2 It can be expreſſed by no *periphraſis* without the word *felonicè.* *ibid.* ſ. 1

3 Felony is included in high treaſon; and a pardon of felony pardons treaſon, if the word *proditorie* be omitted. *Page* 99 ſ. 2

4 It is always accompanied with an evil intention. ſ. 3

5 It ſhall not be imputed to a mere miſtake or miſ-animadverſion. *ibid.*

6 Anciently the bare *intention* to commit felony was conſidered as felonious. *ibid.*

7 But now felony ſhall not be imputed to a bare intention to commit it. *ib.*

8 But the party may be very ſeverely fined for ſuch an intention. *ibid.*

9 Felony in general ſignifies every ſpecies of crime which occaſioned at common law the forfeiture of land or goods. *ibid.* (N)

10 All offences, now capital, are in ſome degree or other, felony. *ibid.*

11 But offences may be felonies without being capitally puniſhed. *ibid.*

12 The true definition of felony is "an offence which occaſions a total forfeiture of lands or goods or both at the common law and to which capital or other puniſhment *may be* ſuperadded according to the degree of guilt." *ibid.*

13 Capital puniſhment may be inflicted and yet the offence be no felony. *ibid.*

14 The true criterion of felony is forfeiture. *ibid.*

15 But by common uſage of the law the term felony is inſeparably applied to capital puniſhments. *ibid.*

16 Therefore if a ſtatute make an offence felony, the law implies that it ſhall be puniſhed with death and forfeiture. *ibid.*

17 Where a ſtatute decrees an offence to undergo judgment of life and member, the offence becomes a felony though that word be omitted. 168. ſ. 1

18 But felony ſhall not be implied from any doubtful or ambiguous words in a ſtatute. *ibid.* ſ. 2

19 Therefore if a ſtatute only prohibit under pain of forfeiture, &c. the offence ſhall be conſidered a miſdemeanor only. ſ. 3

20 Where a ſtatute makes a ſecond offence felony or ſubject to a heavier puniſhment than the firſt, it muſt be after conviction. *Page* 168, 16

21 What ſhall be incidentally implied in every ſtatute which makes an offence felony. 169. ſ. 4 &

22 If one commit an offence made felony by ſtatute, and the ſtatute be repealed he cannot be puniſhed for the felony. ſ.

23 For miſpriſion of felony. 25

FELONIES WITHIN CLERGY.

Aſſault.

1 Aſſaulting perſons with intent to tear or ſpoil their clothes, 6 Geo. 1. c. 23. ſ. 11. 23

Bridges.

2 Deſtroying Walton Bridge, 20 Geo. 2. c. 22. Hampton Court Bridge, 23 Geo. 2. c. 37. ſ. 12. Ribbleſbridge, 24 Geo. 2. c. 36. ſ. 3 Sandwich bridge, 28 Geo. 2. c. 5 Wye bridge, 29 Geo. 2. c. 7 Black Friars bridge, 29 Geo. 2. 86. Jeremy Ferry's bridge, 29 Geo. 2. c. 59. Old Brentford bridge, 3 Geo. 2. c. 63. ſ. 19. 31 Geo. 2. c. 46. Trent bridge, 31 Geo. 2. 59. 193, 19

Bail.

3 Perſonating bail before commiſſioners in the country. 4 W. & M. c. 4 ſ. 4. 178. ſ. 9. 179. ſ. 1

Common.

4 Deſtroying fences ſet up for incloſing common or waſte land, by act of parliament, 9 Geo. 3. c. 29. ſ. 3 192 ſ.

Copper.

5 Removing copper, braſs, &c. from any dwelling houſe, &c. with intent to ſteal; aſſiſting, or buying ſuch goods, knowing them to be ſtolen 21 Geo. 3. c. 68. 218 ſ. 1

Corn

FELONIES WITHIN CLERGY CONTINUED.

Corn.

6 Deſtroying granaries, the ſecond offence, 11 Geo. 2. c. 22. *Page* 143

Cuſtoms.

7 Aſſembling armed to the number of three for running goods, 9 Geo. 2. c. 35. ſ. 10. 227, app. 6

8 Perſons deemed ſmugglers according to the deſcription of 9 Geo. 2. c. 35. ſ. 13. *ibid.*

9 Harbouring offenders againſt the laws of cuſtoms, 19 Geo. 2. c. 34. ſ. 3. 24 Geo. ſeſſ. 2. c. 47. ſ. 12. 231

Dikes.

10 Cutting them in marſh land, 23 H. 8. c. 11. 2 & 3 Ph. & M. c. 19. 198

Fiſh.

11 Fiſhing in another's pond with intent to ſteal, 31 H. 8. c. 2. 221 in margin.

Foreign State.

12 Serving it without taking oath of allegiance, 3 Ja. 1. c. 4. ſ. 18. 74 ſ. 15

Forgery.

13 Of bank bills, 11 Geo. 1. c. 9. ſ. 6. 205 ſ. 2

14 Of bank notes and indorſements. *ibid.*

Gaoler.

15 Forcing priſoner to become approver, 14 Ed. 3. c. 10. 194 c. 51

Hawk.

16 Stealing one, 37 Ed. 3. c. 19. 143 ſ. 23

Hunting.

17 In the night or in diſguiſe, 1 H. 7. c. 7. 186

FELONIES WITHIN CLERGY CONTINUED.

18 Reſcuing ſuch offenders. *Page* 218

Jewels and Plate.

19 Receiving jewels and plate, knowing them to have been ſtolen. 10 Geo. 3. c. 48. 235 ſ. 9

Iron Bars.

20 Stealing them, fixed to buildings, 4 Geo. 2. c. 32. 218 ſ. 13

King.

21 Conſpiring, or imagining to deſtroy him, or any of his council, 3 H. 7. c. 14. 74 ſ. 13

Labourers.

22 Confederacies of maſons to prevent the Statutes of labourers, 3 H. 6. c. 1.

Lead.

23 Entering mines of black lead with intent to ſteal, 25 Geo. 2. c. 10. ſ. 1. 218 ſ. 12

24 Stealing it fixed to buildings, 4 Geo. 2. c. 32. 218 ſ. 13

25 Receivers of lead ſo ſtolen, *id.* ſ. 3.

26 Buying or receiving lead, iron, copper, &c. knowing it to be ſtolen, 29 Geo. 2. c. 30. 232 ſ. 2

Locks.

27 Perſons guilty of demoliſhing them, or of ſluices or floodgates, 1 Geo. 2. ſt. 2. c. 19. 199 ſ. 2

Maiming.

28 And after cutting out tongues or putting out eyes, 5 H. 4. c. 5. 176 ſ. 7

Marriage.

29 Solemnizing it clandeſtinely, 26 Geo. 1. c. 33. ſ. 8. 173 ſ. 11

Money.

FELONIES WITHIN CLERGY. CONTINUED.

Money.

30 Tranſportation of ſilver, or importation of falſe money, 17 Ed. 3. *Page* 70. ſ. 1

31 Blanching copper or putting off counterfeit money, 8 & 9 W. 3. c. 26. ſ. 6. 71. ſ. 2

32 Counterfeiting copper halfpence or farthings, 11 Geo. 3. c. 40. ſ. 1. 72. ſ. 5

33 Receiving or paying counterfeit copper money. *ibid.*

Mutiny.

34 In mariners hindering commanders from fighting, 22 & 23 Car. 2. c. 11. ſ. 9. 185. ſ. 10

35 Officer or ſoldier upon or beyond the ſea raiſing mutiny, diſobeying or reſiſting ſuperior, 2 & 3 Ann. c. 20. ſ. 35.

Palaces.

36 Entering into king's houſe, with intent to ſteal, 33 H. 8. c. 12. ſ. 27.

Pewter.

37 Buying or receiving pewter pots, or other pewter, knowing them to be ſtolen, 21 Geo. 3. c. 69. 235. ſ. 10

Poſt Office.

38 Frauds reſpecting the poſtage of letters, 5 Geo. 3. c. 25. ſ. 19. 7 Geo. 3. c. 50. ſ. 3. 140

Priſoner.

39 Aſſiſting one committed for treaſon or felony (except petty larceny) to attempt an eſcape, 16 Geo. 2. c. 31. Bk. 2.

Plague.

40 Perſons infected with it going abroad, 1 Jac. 1. c. 31. ſ. 7. 241

FELONIES WITHIN CLERGY. CONTINUED.

Poligamy.

41 By 1 Ja. 1. c. 11. *Page* 176

Records.

42 Withdrawing them, 8 H. 6. c. 12. 177

Rogues.

43 Incorrigible, breaking out or eſcaping from houſe of correction, or offending a ſecond time, 17 Geo. 2. c. 5. ſ. 9. 572

Robbery.

44 Stealing furniture from lodgings (if under 12*d.*) 3 W. & M. c. 9. ſ. 5. 127. ſ. 10

45 Aſſault with intent to rob, 7 Geo. 2. c. 21. ſ. 1. 148

Servants.

46 Taking their maſters goods at their death, 33 H. 6. c. 1. *Quere* if in uſe. 197

47 Aſſaulting, &c. Maſter wool-comber or weaver, 12 Geo. 1. c. 34. ſ. 6. 239

48 Imbezzling goods delivered to them to the value of 40*s.* 21 H. 8. c. 7. Apprentices under 18 excepted. 138

Sheep.

49 Exporting them alive, the ſecond offence, 8 El. c. 3. ſ. 2. 195

Slaughtering.

To ſlaughter cattle without notice. 179

Spirituous Liquors.

50 Reſcuing offenders againſt the acts concerning theſe liquors, 11 Geo. 2. c. 26. ſ. 2. 24 Geo. 2. c. 40. ſ. 28.

FELONIES WITHIN CLERGY CONTINUED

Stamps.

51 Committing frauds in the ſtamp duties on vellum, parchment, paper, and cards, 12 Geo. 3. c. 48.

Stolen Goods.

52 Buyers or receivers of them, 5 Ann. c. 31. ſ. 5. *Page* 232

53 Taking reward to help one to ſtolen goods (if he do not apprehend offender) in ſome caſes, 4 Geo. 1. c. 11. ſ. 4. 237

Turnpikes.

54 Deſtroying them, 5 Geo. 2. c. 33. 193

55 Turnpike gates, houſes, or weighing engines, 13 Geo. 3. c. 84. ſ. 42. 193

Watermen.

56 Carrying greater number of paſſengers than allowed, if any paſſenger be drowned, 10 Geo. 2. c. 31. ſ. 9. 569

Woods.

57 Firing them, 1 Geo. 1. ſt. 2. c. 48 224

FELONIES WITHOUT CLERGY.

Acceſſaries,

1 Before and after the fact in petty treaſon. 133

2 Murder. 117

3 Burglary. 165

4 Robbery in dwelling houſes, or in churches. 151

5 In or near the highway. 150

6 Houſe-burning, or burning of barns where there is corn or grain, 23 H. 8. c. 1. 5 & 6 Ed. 6. c. 9. 4 & 5 P. & M. c. 4. 156

7 Before and after in horſe-ſtealing, 31 El. c. 12. ſ. 5. 146

FELONIES WITHOUT CLERGY CONTINUED.

8 Before the fact in ſtealing women, having lands or goods, or being heirs apparent, 39 El. c. 9. ſ. 2. *Page* 171 ſ. 2

9 Before the fact in procuring any fine, recovery, deed inrolled, ſtatute, recognizance, bail or judgment to be acknowledged in the name of another, 21 Ja. 1. c. 26. 178. ſ. 9.

10 Before the fact in maiming, 22 & 23 Car. 2, c. 1. 176, ſ. 4

11 Before the fact in burglary, ſhoplifting, &c. 3 & 4 W. & M. c. 9. 151

12 Before the fact in robberies in ſhops, warehouſes, coach-houſes or ſtables, 10 & 11 W. 3. c. 23. *ibid.*

13 Before the fact in piracy, in ſome caſes, 11 & 12 W. 3. c. 7. 8 Geo. 1. c. 24. 156

14 To forging any deed, will, bond, bill of exchange, note, indorſement or aſſignment of bill or note, or any acquittance or receipt, 2 Geo. 2. c. 25. 210. ſ. 16

15 To forging bills of exchange, accountable receipts, warrants, or orders for payment of money or delivery of goods, 7 Geo. 2. c. 22. 211. ſ. 18

16 Before the fact in ſheep-ſtealing, 14 Geo. 2. c. 6. 180

17 Before the fact in ſtealing cotton, &c. from bleaching grounds, 18 Geo. 2. c. 27. 146

18 Before the fact in theſts to 40*s.* value in any veſſel or in any wharf, 24 Geo. 2. c. 45. *ibid.*

19 Before the fact in deſtroying London Bridge, 31 Geo. 2. c. 20. ſ. 6. 194

Bail.

20 Perſonating bail, 21 Jac. 1. c. 26. 178

Bank.

21 Officer or ſervant of bank ſecreting or imbezzling any note, &c. 15 Geo. 2. c. 13. ſ. 12. 139

22 Perſons not authoriſed by the Bank making or uſing moulds for the making

FELONIES WITHOUT CLERGY CONTINUED.

making of paper with the words "Bank of England" viſible in the ſubſtance, or having ſuch moulds in their poſſeſſion, 13 Geo. 3. c. 79. ſ. 1. *Page* 206

Banks.

23 Deſtroying them, 6 Geo. 2. c. 37. ſ. 5. 200. ſ. 7

Bankrupt.

24 Not ſurrendering, or not ſubmitting to be examined, or concealing or imbezzling their eſtates, 5 Geo. 2. c. 30. 202

Baſtard.

25 Mother concealing the death of a baſtard child, 21 Ja. 1. c. 27. ſ. 2. 121. ſ. 17

Black Act.

26 Hunting armed and diſguiſed. 186
27 And killing or ſtealing deer. 187
28 Robbing warren. *ibid.*
29 Stealing fiſh out of any river, &c. *ib.*
30 Or any perſon unlawfully hunting in his majeſty's foreſts, &c. *ibid.*
31 Or breaking down the head of any fiſh-pond. 222
32 Or killing, &c. of cattle. 180
33 Or cutting down trees. 215
34 Setting fire to houſe, barn, or wood. 166
35 Or ſhooting at any perſon. 225
36 Or ſending anonymous letter, or ſigned with fictitious name, demanding money, &c. 226
37 Or reſcuing ſuch offenders, 9 Geo. 1. c. 22. 222

Black Lead.

38 Offenders committed or tranſported for entering mines of black lead or with intent to ſteal, eſcaping or breaking priſon, or returning from tranſportation. 25 Geo. 2. c. 10. 218. ſ. 12

FELONIES WITHOUT CLERGY CONTINUED.

Bridges.

39 Wilfully damaging London Bridge, 31 Geo. 2. c. 19. ſ. 9. Weſtminſter bridge, 9 Geo. 2. c. 29. ſ. 5. Fulham bridge, 12 Geo. 1, c. 36. ſ. 3. *Page* 194

Buggary.

40 By 25 H. 8 c. 6. 2 & 3 Ed. 6. c. 29. Revived by 5 El. c. 17. 9. c. 4

Burglary.

41 By 1 Ed. 6. c. 12. 18 El. c. 7. 12 Ann. c. 7. 165 (N)

Burning.

42 Houſes or barns with corn, 23 H. 8. c. 1. 25 H. 8. c. 3. 22 & 23 Car. 2. c. 7. 43 El. c. 13. 9 Geo. 1. c. 22. 166. 324

Challenge of Jurors.

43 Challenging above 20, if the indictment be for ſuch offence for which the offender would have been excluded clergy, if convicted by verdict or confeſſion. 25 H. 8 c. 3. 4 & 5 Ph. & M. c. 4. 3 & 4 W. & M. c. 9.

Cloth.

44 Stealing it from the rack or tenters, 22 Car. 2. c. 5. ſ. 3. 146
45 Perſons tranſported for ſtealing cloth, &c. from rack, &c. returning, 15 Geo. 2. c. 27. *ibid.*

Coals.

46 Firing collieries, 10 Geo. 2. c. 32. 224

Corn.

47 Perſons tranſported for deſtroying granaries, returning, 11 Geo. 2. c. 22. ſ. 2. 243

Cottons.

FELONIES WITHOUT CLERGY CONTINUED.

Cottons.

48 Selling cottons with forged ſtamps, 14 Geo. 3. c. 72. ſ. 10. *Page* 212

Cumberland.

49 Forcibly carrying ſubjects out of Cumberland, Northumberland, Weſtmorland, and Durham, and taking or giving black mail, burning corn, &c. 43 El. c. 13. ſ. 2. 200. c. 46

50 Notorious thieves, or ſpoil takers in Northumberland, or Cumberland (or to be tranſported at diſcretion of judge,) 18 Car. 2. c. 3. 202. ſ. 3

Cuſtoms.

51 Perſons liable to tranſportation for offences againſt the cuſtoms, offending again, after having taken the benefit of the indemnifying act, 9 Geo. 2. c. 35. ſ. 7. 18 Geo. 2. c. 28. ſ. 7.

52 Perſons convicted of wounding cuſtom-houſe officers, returning from tranſportation, 6 Geo. 1. c. 21. ſ. 35. 9 Geo. 2. c. 35, ſ. 28. 247

53 Shooting at any ſhip belonging to the navy, or in the ſervice of the cuſtoms or exciſe, or ſhooting at or wounding any officer of the navy, cuſtoms, or exciſe, in the exerciſe of his duty, 24 Geo. 3. ſeſſ. 2. c. 47. ſ. 11. 232. ſ. 12

54 Perſons guilty of felony under the ſaid act not ſurrendering on proclamations and notice in the Gazette, id. ſ. 12. 228. ſ. 2

55 Perſons convicted of harbouring ſuch offenders having been ſentenced for tranſportation returning before their time, *id.* ſ. 13. 247

Deer.

56 Perſons convicted of ſecond offence in hunting and taking them away, or for coming armed into a foreſt with intent to ſteal them, 16 Geo. 3. c. 30. *Page* 189

Deeds inrolled.

57 Acknowledging them in the name of another, 21 Ja. 1. c. 26. 178 ſ. 9

Fens.

58 Deſtroying, &c. any of the works in Bedford Level, 27 Geo. 2. c. 19. 200. ſ. 8

Fines.

59 Acknowledging them in the name of another, 21 Ja. 1. c. 26. 178. ſ. 9

Forgeries.

60 Of deeds on ſecond conviction, 5 El. c. 14. ſ. 7. 340 ſ. 14

61 Teſtimonials of juſtices by ſoldiers or mariners, 39 El c. 17. ſ. 3. 183

62 Deeds, will, bill of exchange, note, indorſement, or receipt, on firſt conviction, 2 Geo. 2. c. 25. ſ. 1. 210

63 Authorities to transfer ſtock, or perſonating proprietors, 8 Geo. 1. c. 22. 208

64 Extended to funds eſtabliſhed ſince by 31 Geo. 2. c. 22. ſ. 80. 212

65 Order for payment of annuities. or perſonating proprietor, 9 Geo. 1. c. 12. ſ. 4. 9 Geo. 2. c. 34. ſ. 8. 207 ſ. 8

66 New ſtamps or receipts for monies payable on indentures, 8 Ann. c. 9. ſ. 41. 207

67 Hand of accountant-general, regiſter, clerk of report office, or caſhier of bank, 12 Geo. 1. c. 32. ſ. 9. 210 ſ. 15

68 Eaſt India bonds, 12 Geo. 1. c. 32. ſ. 9. *ibid.*

69 South Sea common ſeal, bonds, receipts, warrants for dividends, 9 Ann. c. 21. ſ. 57. 6 Geo. 1. c. 4. ſ. 56. 6 Geo. 1. c. 11. ſ. 50. 12 Geo. 1, c. 32. ſ. 9. 200

70 Mediterranean paſſes, 4 Geo. 2. c. 18. 211

FELONIES WITHOUT CLERGY CONTINUED.

71 Entry of acknowledgment of bargainor in registry of York, second offence, 8 Geo. 2. c. 6. f. 31. *Page* 211 f. 19

72 Stamp for marking gold and silver, 31 Geo. 2. c. 32. f. 15. 208

73 Policy of Royal Exchange and London Assurances, 6 Geo. 1. c. 18. f. 13. 201

74 Debentures, 5 Geo. 1. c. 14. f. 10. 213

75 Marks on leather, 9 Ann. c. 11. f. 44. 5 Geo. 1. c. 2. f. 9.

76 Marks on linen, 10 Ann. c. 19. f. 97. 4 Geo. 3. c. 37. f. 26.

77 Register or licence of marriage, 26 Geo. 2. c. 33. f. 16. 211. f. 20

78 Common seal of bank, or bank notes, 8 & 9 W. 3. c. 20. f. 36. 11 Geo. 1. c. 9. f. 6. 15 Geo. 1. c. 13. f. 11. 205

79 Exchequer bills, &c. 7 & 8 W. 3. c. 31. f. 78. 9 W. 3. c. 2. f. 3. 5 Ann. c. 13. 3 Geo. 1. c. 8. f. 40. 6 Geo. 1. c. 4. f. 91. 9 Geo. 1. c. 5. f. 19. 11 Geo. 1. c. 17. f. 6. 30 Geo. 2. c. 3. f. 156. 33 Geo. 2. c. 1. f. 156, &c. 206 f. 7

80 Lottery orders. 209 f. 12

81 Stamps, 5 W. & M. c. 21. f. 11.—9 & 10 W. 3. c. 25. f. 59.—9 Ann. c. 23. f. 34.—10 Ann. c. 19. f. 115. 163.—10 Ann. c. 26. f. 72.—5 Geo. 1. c. 2. f. 9.—6 Geo. 1. c. 21. f. 60.—29 Geo. 2. c. 12. f. 21.—29 Geo. 2. c. 13. f. 5.—30 Geo 2. c. 19. f. 27.—32 Geo. 2. c. 35. f. 17.—2 Geo. 3. c. 36. f. 8.—5 Geo. 3. c. 35. f. 6.—5 Geo. 3. c. 46. f. 40.—5 Geo. 3. c. 47. f. 8.—7 Geo. 3. c. 44. f. 5.—16 Geo. 3. c. 34. f. 15.—17 Geo. 3. c. 50. f. 25.—20 Geo. 3. c. 28.—23 Geo. 3. c. 49. f. 20.—23 Geo. 3. c. 58. f. 11.—24 Geo. 3. c. 54. f. 16.—25 Geo. 3. c. 50. f. 19.—25 Geo. 3. c. 55. f. 15.—25 Geo. 3. c. 51. f. 15.—25 Geo. 3. c. 79. f. 17.—25 Geo. 3. c. 48. f. 10. *Page* 207 f. 9

82 Seamens' tickets, wills, &c, 9 Geo. 3. c. 30, f. 6. 212

83 Hand of receiver of prefines, 32 Geo. 2. c. 14. f. 9. 213 f. 23

FELONIES WITHOUT CLERGY CONTINUED.

84 Acceptance of bills of exchange, or accountable receipts, 7 Geo. 2. c. 22. *Page* 211 f. 18

85 Acceptance of bills of exchange to defraud corporations, 18 Geo. 3. c. 18. *ibid.*

86 Warrant, or order for payment of money or delivery of goods, 7 Geo. 2. c. 22, *ibid.*

Fustian.

87 Stealing it from bleaching grounds, 4 Geo. 2. c. 16. 18 Geo. 2. c. 27. 146

Helping to stolen Goods on Reward.

88 In some cases, unless the helper apprehends the offender, 4 Geo. 1. c. 11. 237 app. 8

Hops.

89 In cutting hop-binds, 6 Geo. 2. c. 37. f. 6. 238 f. 2

Horse-Stealing.

90 By 37 H. 8. c. 8. f. 2. 1 Ed. 6. c. 12. f. 10. 2 & 3 Ed. 6. c. 33. 146

Judgments.

91 Acknowledging them in the name of another, 21 Ja. 1. c. 26. 178 f. 9

Letter.

92 Robbing the mails, or stealing letters from post offices, 5 Geo. 3. c. 25. f. 18. 7 Geo. 3. c. 50. f. 2. 140

Letters threatening.

93 Sending them, or rescuing such offenders, 27 Geo. 2. c. 15. 225

Linen.

94 Stealing it from bleaching grounds, 4 Geo. 2. c. 16. 18 Geo. 2. c. 27. 146

FELONIES WITHOUT CLERGY CONTINUED.

95 Breaking into ſhop, &c. to ſteal or deſtroy linen yarn or implements, 4 Geo. 3. c. 37. *Page* 239 ſ. 2
96 Or to cut or deſtroy linen or cotton, 22 Geo. 3. c. 40. ſ. 2. 240 ſ. 3

Maiming.

97 Any perſon maliciouſly lying in wait, 22 & 23 Car. 2. c. 1. 176 ſ. 4

Marſhes.

98 Firing engines for draining them, the ſecond offence, 11 Geo. 2. c. 34 14 Geo. 2. c. 24. 21 Geo. 3. c. 18. 200 ſ. 8

Mariners.

99 Wandering without teſtimonial of juſtices, 39 El. c. 17. ſ. 2. 183
100 Departing within the year from the ſervice of thoſe who took them to ſave them from execution, 39 El. c. 17. ſ. 4. 184

Mills.

101 Riotous aſſembling and deſtroying Mills, 9 Geo. 3. c. 29. ſ. 1, 2. 309 ſ. 60

Money.

102 Uttering falſe monies the third time, &c. 15 Geo. 2. c. 28. ſ. 2, 3. 71 ſ. 4

Murder.

103 By 12 H. 7. c. 7. 23 H. 8. c. 1. 25 H. 8. c. 3. 28 H. 8. c. 1. 1 Ed. 6. c. 12. 117

Mute.

104 Standing mute, or not anſwering directly, 25 H. 8. c. 3. 1 Ed. 6. c. 12. 4 & 5 Ph. & M. c. 4. 3 & 4 W. & M. c. 9. 1 Ann. c. 9.
105 Perſons arraigned for felony or piracy, and ſtanding mute, ſhall be convicted, 12 Geo. 3. c. 20. 3 (N) 6

FELONIES WITHOUT CLERGY CONTINUED.

Outlawry.

106 For offences not within the benefit of clergy, 1 Ed. 6. c. 12. 4 & 5 Ph. & M. c. 4. 8 El. c. 4. 18 El. c. 7. 22 Car. 2. c. 5. 3 & 4 W. & M. c. 9.

Perjury.

107 Perſons convicted of wilful and corrupt perjury, eſcaping, breaking priſon, or returning from tranſportation, 2 Geo. 2. c. 25. ſ. 2 *Page* 328

Pick-pocket,

108 Taking *clam & ſecrete* from the perſon above the value of 12*d.* 8 El. c. 4. 150

Piracy.

109 By 11 & 12 W. 3. c. 7. 4 Geo. 1. c. 12. 8 Geo. 1. c. 24. 152 c. 7
110 Perſon laying violent hands on his commander, to hinder him from fighting, &c. to ſuffer as pirate, 11 & 12 W. 3. c. 7. ſ. 9. *ibid.*
111 Trading with pirates, 8 Geo. 1. c. 24. 156 ſ. 17

Plate.

112 Fraudulent marking of plate or counterfeiting the ſtamp, made felony without clergy, by 31 Geo. 2. c. 32. ſ. 15. altered to tranſportation, 13 Geo. 3. c. 59. 208

Poiſoning.

113 Of malice prepenſed, 1 Ed. 6. c. 12. ſ. 13.

Popiſh Recuſants.

114 Refuſing to abjure, or not departing the realm within a time limited, or returning without the king's leave, 35 El. c. 1. ſ. 3. and c. 2. ſ. 10.

Prieſts

FELONIES WITHOUT CLERGY CONTINUED.

Prieſts and Jeſuits.

115 They who receive, relieve, or maintain them knowingly, 27 El. c. 2. ſ. 4. *Page* 76

Priſoners.

116 Taking the benefit of inſolvent acts and forſwearing themſelves, 28 Geo. 2. c. 13. ſ. 17. 1 Geo. 3. c. 17. ſ. 26. 204 ſ. 4

117 Refuſing to deliver up their effects, or concealing to the value of 20*l.* 28 Geo. 2. c. 13. ſ. 39. 1 Geo. 3. c. 17. ſ. 46. *ibid.*

118 Perſons tranſported for aſſiſting priſoners to eſcape, and returning, 16 Geo. 2. c. 31. Eſcaping a ſecond time from confinement, to hard labour in lieu of tranſportation, 16 Geo. 3. c. 13. ſ. 15. 245

Privy Councillors.

119 They who attempt to kill, or do ſtrike or wound them in the execution of their office, 9 Ann. c. 16. 74 ſ. 14

Proceſs.

120 Perſons diſguiſed abetting rioters who oppoſe the execution of proceſs in pretended privileged places, 9 Geo. 1. c. 28. ſ. 3. Bk. 2

Quarantine.

121 Not performing it, 7 Geo. 1. c. 3. 8 Geo. 1. c. 8. 1 Geo. 2. c. 13. 6 Geo. 2. c. 34. 26 Geo. 2. c. 6. 241 app. 11

122 Maſter of ſhip offending againſt direction of 26 Geo. 2. c. 6. ſ. 2. 241

123 Concealing the having infected perſons on board, 28 Geo. 2. c. 6. ſ. 3. 242

124 Refuſing to perform quarantine, 26 Geo. 2. c. 6. ſ. 8. 242

125 Sound perſons entering lazaret, and eſcaping before they have performed quarantine, 26 Geo. 2. c. 6. ſ. 10. *Page* 24

126 Superintendant of quarantine neglecting duty, 26 Geo. 2. c. 6. ſ. 17. *ibid.*

127 Concealing or clandeſtinely conveying letters or goods, 26 Geo. 2. c. 6. ſ. 18. *ibid.*

Rape.

128 Carnally knowing woman child under the age of ten years, 18 El. c. 7. ſ. 4. 170 ſ.

Reſcue.

129 Reſcuing convicts from tranſportation, 6 Geo. 1. c. 23. ſ. 5.

130 Reſcuing any perſon committed for, or found guilty of murder, or going to execution, or during execution, 25 Geo. 2. c. 37. ſ. 9. Bk.

131 Perſons tranſported for reſcuing the body of ſuch offenders, after execution from the ſheriff or ſurgeon, &c. and returning, 25 Geo. 2. c. 27. ſ. 10. *ibid.*

Rebels.

132 Pardoned and returning from tranſportation, or going into the dominions of France or Spain, 20 Geo. 2. c. 46. ſ. 1. 244 app. 13

133 Perſons aiding them to ſuch purpoſes, 2 Geo. 20. c. 46. ſ. 2.

134 Or holding correſpondence with them, or with perſons employed by them, by letters or otherwiſe, 20 Geo. c. 46. ſ. 8.

Recognizance.

135 Acknowledging it in the name of another, 21 Ja. 1. c. 26. 178 ſ. 9

Recovery.

136 Acknowledging it in the name of another, 21 Ja. 1. c. 26. *ibid.*

FELONIES WITHOUT CLERGY CONTINUED.

Rioters.

136 Aſſembled to the number of twelve and continuing together one hour after proclamation, 1 Geo. 1. ſt. 2. c. 5. ſ. 1. *Page* 308

137 Pulling down buildings, 1 Geo. 1. ſt. 2. c. 5. ſ. 4. 308 ſ. 56

138 Or hindering proclamation being made, 1 Geo. 1. ſt. 2. c. 5. ſ. 5. *ibid.*

Robbery.

139 Of churches, or ſacrilege, 23 H. 8. c. 1. 25 H. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 9 & 10. 151

140 In or near the highway. 23 H. 8. c. 1. 25 H. 8. c. 3. 1 Ed. 6. c. 12. 150

141 In booths or tents in any fair or market, 5 & 6 Ed. 6. c. 9. 151

142 In dwelling houſes, ſhops, warehouſes, coach houſes, or ſtables, 23 H. 8. c. 1. 25 H. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 9 & 10 39 El. c. 15. 3 & 4 W. & M. c. 9. 10 & 11 W. 3. c. 23. 12 Ann. c. 7. *ibid.*

143 On board any veſſel, or on any wharf, to the value of 40*s.* 24 Geo. 2. c. 45. 146

144 Stealing furniture, &c. from lodgings (if above 12d. value) 3 & 4 W. & M. c. 9. ſ. 5. 137. ſ. 10

145 Stealing exchequer orders, tallies or other orders intitling perſon to annuity or ſhare in any parliamentary fund, or exchequer bills, bank notes, South Sea bonds, Eaſt India bonds, dividend warrants of bank, South Sea, Eaſt India, or other company, bills of exchange, navy bills, or debentures, goldſmiths notes, or other bonds or warrants, bills or promiſſory notes, &c. is felony the ſame as if the money ſecured by ſuch bonds, &c. had been ſtolen, 2 Geo. 2. c. 25. ſ. 3. *And ſee* 31 Geo. 2. c. 22. ſ. 81. 142

146 Offenders ordered to be tranſported for aſſault with intent to rob, breaking gaol or eſcaping, 7 Geo. 2. c. 21, ſ. 2. *Page* 148

Sacrilege.—See Robbery.

Sheep-ſtealing.

147 By 14 Geo. 2. c. 6. extended to bull, cow, &c. by 15 Geo. 2. c. 34. 180. ſ. 3

Smuggling.

148 By 8 Geo. 1. c. 18. 227. ap. 6

149 Aſſembling armed for running of goods, 19 Geo. 2. c. 34. ſ. 1. 227. ap. 6

150 Perſons tranſported for aſſiſting in running goods, and returning, 9 Geo. 2. c. 35. ſ. 10. *ibid.*

151 Perſons convicted of running goods, returning from tranſportation, 8 Geo. 1. c. 18. ſ. 6. *ibid.*

Sea.

152 Treaſons, robberies, felonies, murders, and confederacies, done upon the ſea, 28 H, 8. c. 15. ſ. 3. 152

Seamen.

153 Perſonating them to receive their pay, 31 Geo. 2. c. 10. ſ. 24. 212. ſ. 22

Ships.

154 Deſtroying them wilfully, 22 & 23 Car. 2. c. 11. ſ. 12. 1 Ann. ſt. 2. c. 9. 4 Geo. 1. c. 12. 11 Geo. 1, c. 29. 185. 186

Shooting.

155 Shooting at another by 9 Geo. 1. c. 22. 225

Soldiers.

156 Departing without licence, 7 H. 7. c. 1. 3 H. 8. c. 5. 2 & 3 Ed. 6. c. 2. ſ. 6. 185. ſ. 8, 9

157 Wandering without teſtimonial from juſtices, 39 El. c. 17. ſ. 2. 184

158 De-

FELONIES WITHOUT CLERGY CONTINUED.

158 Departing within the year from the ſervice of thoſe who took them to ſave them from execution, 39 El. c. 17, ſ. 4. *Page* 184

159 Inliſting or cauſing others to inliſt in foreign ſervice, 9 Geo. 2. c. 30. 74. ſ. 16

160 Accepting commiſſion from the French king.—Continuing in the French ſervice after 29 September 1757.—Contracting to enliſt in foreign ſervice, 29 Geo. 2. c. 17. 75. 75 ſ. 17

South Sea Company.

161 Officer or ſervant embezzling their effects, 24 Geo. 2. c. 11. ſ. 3.

Stamps.

162 Counterfeiting ſtamps on ſilks, callicoes, linens, or ſtuffs printed in Great Britain, 13 Geo. 3. c. 56. on printed cottons, 14 Geo. 3. c. 72. ſ. 8. 208

163 On wrought plate, 24 Geo. 3. c. 54. ſ. 16. 208

Statute.

164 Acknowledging it in the name of another, 21 Ja. 1. c. 26. 178. ſ. 9

Stores.

165 Imbezzling them to the value of 20s. or offending againſt 31 El. c. 4. concerning imbezzlement of ſtores, 22 Car. 2. c. 5. ſ. 3. 75. ſ. 18

166 Burning or otherwiſe deſtroying ſhips of war, buildings in dockyards, &c. or military ſtores, 12 Geo. 3. c. 24. 75. ſ. 19

Tranſportation.

167 Felons returning within the time, 4 Geo. 1. c. 11. 6 Geo. 1. c. 23. 16 Geo. 2. c. 15. 24 Geo. 3. c. 12. ſ. 21. 244 to 250

FELONIES WITHOUT CLERGY CONTINUED.

Turnpikes.

168 Deſtroying them, or locks, ſluices or floodgates, or reſcuing ſuch offenders, 8 Geo. 2. c. 20. And ſe 13 Geo. 3. c. 34. ſ. 42. *Page* 19 c. 5

169 Deſtroying toll gates, weighing engines, &c. or reſcuing offenders 13 Geo. 3. c. 84. ſ. 42. 192. ſ.

Wool and Woollen Manufactures.

171 Unlawful exporters returning after tranſportation, 4 Geo. 1. c. 11 ſ. 6. 195. c. 5

172 Oppoſing officers of cuſtoms, exciſe, &c. in ſeizing wool, 12 Geo. 2 c. 21. ſ. 26. *ibid*

173 Deſtroying woollen goods, or rack, or tools, 12 Geo. 1. c. 44. ſ 7. See Cloth. Bk.

*173 Entering by force any houſe with intent to deſtroy any woollen goods or tools uſed for manufacturing, 22 Geo. 3. c. 40. ſ. 1. 239

Women.

174 Stealing them, and marrying or defiling them, having lands or goods, or being heirs apparent, 39 El. c. 9 171

175 After conviction of an offence that was within clergy, ouſted of it on conviction of any other felony, 3 & 4 W. & M. c. 9.

Wreck.

176 Making holes in ſhip in diſtreſs, or ſtealing pump, 12 Ann. ſt. 2. c. 18. ſ. 5. 219

177 Plundering ſhipwrecked goods, or beating, &c. with intent to kill, or otherwiſe obſtructing the eſcape of any perſon from ſuch ſhip, or putting out falſe lights with intent to bring any ſhip into danger, 26 Geo. 2. c. 19. 220

FELONIOUS HOMICIDE.—
Murder, Manſlaughter.

There are only two ſpecies of felonious homicide, *viz.* murder and manſlaughter. *Page* 115

Theſe are either with or without malice. *ibid.* c. 30

That without malice is called manſlaughter, and ſometimes chance medley. *ibid.* ſ. 1

This is ſuch a killing as happens upon a ſudden quarrel; or in the commiſſion of an unlawful act, without any deliberate intention of doing miſchief. *ibid.*

There can be no acceſſaries to manſlaughter, becauſe it muſt be done without premeditation. 115

Felonious homicide, with malice, is either murder or petit treaſon. 117 c. 31

FELO DE SE.

Homicide may be againſt a man's own life. 102 c. 27

To commit the crime of *ſelf-murder*, the offender muſt be of the age of diſcretion, and *compos mentis*. 102 ſ. 1

The common concluſion that a *ſelf-murderer* muſt *ipſo facto* be *non compos mentis*, as being contrary to nature and all ſenſe and reaſon, is abſurd. ſ. 2

Its repugnancy to the duties of humanity rather aggravates, than exculpates the offence. ſ. 3

The murder of a child or parent is as much againſt reaſon and nature. *ibid.*

The abhorrence of the law reſpecting this crime. 102, 103

One who maliciouſly attempts the death of another, and in purſuance thereof, unwillingly kills himſelf, is *felo de ſe*. 103

Wherever death is cauſed by an act done with a murderous intent, it makes the offender a murderer. *ibid.*

This rule illuſtrated. *ibid.* ſ. 5

To kill another by deſire, is murder, and the perſon killed is not *felo de ſe*. ſ. 6

But where two perſons take poiſon, and one ſurvive, he who purchaſed the poiſon is not a murderer, though the one who dies is a *felo de ſe*. *Page* 103 ſ. 6

A *felo de ſe* ſhall forfeit all chattels, real or perſonal, on his own right; all chattels poſſeſſed jointly with his wife or in her right; and all bonds, &c. perſonal things in action which belong to himſelf—and perhaps entire chattels in poſſeſſion to which he is jointly entitled with another, *except merchandize*, but he ſhall forfeit only a moiety of joint chattels which may be ſevered, and nothing as executor or adminiſtrator. ſ. 7

The blood of a *felo de ſe* is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of dower. ſ. 8

No part of the perſonal eſtate is veſted in the king before inquiſition found. 104 ſ. 9

But after inquiſition, the forfeiture relates back to the time the wound was given. ſ. 10

Inquiſition ought to be *ſuper viſum corporis* which cannot be traverſed. ſ. 11

If the body cannot be found, juſtices of peace or the king's bench, if in the county where it ſits, may take inquiſition, and this inquiſition may be traverſed. ſ. 12

How ſuch inquiſitions ought to ſtate the facts. 13, 14

They are in the nature of indictments, *ibid.*

If they be full in ſubſtance, defect of form may be amended. ſ. 15

Vide Coroner. Corruption of Blood. Dower. Forfeiture. Inquiſition. Pardon. Year and Day.

FEME COVERT.

A feme covert, favoured in reſpect of her huſband's authority over her, ſhall not be puniſhed for committing a bare theft in company with or by coercion of her huſband. 3, 4

This exemption extends to burglary and perhaps to robbery. 4 (N) 8

3 A feme covert ſhall not be deemed an acceſſary to a felony for receiving her huſband who has been guilty of it. *Page* 4 ſ. 10
4 Nor ſhall ſhe be deemed a principal for ſuch reception, if the huſband has been guilty of treaſon. (N) 9
5 Neither is ſhe affected by receiving, jointly with her huſband, any other offender. *ibid.*
6 She cannot be admitted as a witneſs even *collaterally* to diſcover her huſband's guilt. *ibid.*
7 But if a *feme covert* commit a theft of her own voluntary act, or by the *bare* command of her huſband, (*quere*) or be guilty of treaſon, murder, or (*qurre*) robbery, in company with or by coercion of her huſband ſhe is puniſhable. 4 ſ. 11
8 Or if ſhe receive ſtolen goods without her huſband's privity, or if he, knowing it, diſclaims her, ſhe may be puniſhed as acceſſary. *ibid.* (N) 10
9 A wife may be indicted together and condemned to the pillory with her huſband for keeping a bawdy houſe. 4 ſ. 12
10 Therefore an action will lie for ſaying ſhe keeps a bawdy houſe. 357 (N) 1
11 Generally a feme covert ſhall anſwer for any offence not capital. 4 ſ. 13
12 If the offence be of a nature which ſhe may commit alone, the huſband need not be joined in the indictment, provided he is no way privy. *ibid.*
13 If a woman bring a falſe appeal of death, ſhe ſhall be impriſoned alone. 4, 5
14 But for a forfeiture, the huſband may be made liable, by joining him in the proſecution. 5
15 Several offences for which a woman may be indicted alone, enumerated. 5 (N) 11
16 A *feme covert* is within the 1 & 23 of Eliz. impoſing penalties on abſence from church, and an information lies againſt the huſband. 22 ſ. 11 (N)
17 It is very doubtful whether the conviction of a *feme covert* upon an indictment can be pleaded to an information againſt her and her huſband. 27
18 The huſband is not liable to pay a forfeiture recovered againſt his wife upon an indictment. *Page* 27

FENCES.

1 The offence of levying dykes by approvers. 191 c. 50
2 By 6 Geo. 1. c. 16. to deſtroy fences round woods or plantations, is three months correction and the pariſh liable to the damages. 192 ſ. 2
3 By 16 Geo. 3. c. 30. to deſtroy the fences of deer parks, is tranſportation. *ibid.* ſ. 3
4 By 9 Geo. 3. c. 29. to deſtroy fences of waſte lands incloſed, is tranſportation. *ibid.* ſ. 4
5 By 4 Geo. 2. c. 32. to break with intent to ſteal any lead, iron bar, paliſade, or rail fixed to a dwelling houſe or its appurtenances or any other buildings, is tranſportation. 218 ſ. 13
6 A church is within the words of this act. *ibid.* (N) 1

FERÆ NATURÆ.

1 Larceny may be committed of animals *feræ naturæ* if they be fit for food and reduced to tameneſs; and known by the offender to be ſo. 144 ſ. 26
2 But otherwiſe, larceny cannot be committed of them, becauſe animals *feræ naturæ* are goods whereof no particular perſon has a property. 143 ſ. 24

FERN.—*Vide Burning.*

1 By 4 & 5 W. & M. c. 23. (for preſerving the red and black game) no perſon ſhall burn on the mountains, &c any fern, &c between 2d Feb. and 24th June, on pain of impriſonment. 224 (N)
2 By 28 Geo. 2. c. 19. (for preſerving deer and game) no perſon without right or legal licence, ſhall burn, &c. any goſs, furze, or fern upon any foreſt

foreſt or chaſe, on pain of from 40*s.* to 5*l.* *Page* 224

FIDELITY.—*Vide Oaths.*

FIGHTING.—*Vide Duel. Murder. Affray. Riot. Piracy.*

FIRE.—*Vide Arſon. Burning. Incendiaries.*

1 By 6 Ann. c. 31.—12 Geo. 3. c. 73. ſ. 35.—14 Geo. 3. c. 78. ſ. 84. if any menial or other ſervant, through negligence ſhall fire or cauſe to be fired any dwelling houſe or out houſe they ſhall forfeit 100*l.* on conviction by one witneſs, &c. or ſuffer eighteen months impriſonment. 197 c. 53

FIR.—*Vide Trees.*

FIREWORKS.

1 By 9 & 10 W. 3. c. 7. to make, ſell, or expoſe to ſale any fireworks, or any caſes, moulds, or implements for making them, incurs a penalty of 5*l.* 363

2 If any perſon ſhall, or ſhall ſuffer fire works to be *let off* in or from their houſe in any public ſtreet or highway, they ſhall forfeit 20*s.* 364

3 And every ſuch offence ſhall be adjudged a common nuiſance. *ibid.*

FIRE ENGINE.

1 By 9 Geo. 3. c. 29. to damage or deſtroy any fire engine belonging to any colliery, on conviction within eighteen months, incurs a penalty of tranſportation, 238 ſ. 4

FISH.

1 By 5 Eliz. c. 21. to deſtroy fiſh ponds, &c. incurs three months impriſonment, ſecurity for ſeven years, and compenſation to the party grieved. *Page* 221

2 By 4 & 5 W. 3. c. 23. no perſons, except fiſhermen, and the owners of fiſheries ſhall keep nets, &c. ſ. 2

3 By 22 & 23 Car. 2. c. 25. no perſon ſhall uſe any net, &c. in the fiſhery of another without the conſent of the owner. ſ. 3

4 By 9 Geo. 1. c. 22. whoever, *armed and diſguiſed* ſhall ſteal fiſh, or reſcue an offender, ſhall ſuffer without benefit of clergy. 222 ſ. 4

5 By 5 Geo. 3. c. 14. whoever ſhall enter into any incloſed place belonging to a dwelling houſe where a ſtream of water ſhall run, and ſteal or deſtroy fiſh, or buy them, &c. ſhall be tranſported for ſeven years. ſ. 5

6 And to ſteal or deſtroy fiſh, in any incloſed ground being private property incurs a penalty of 5*l.* on conviction in a ſummary way. ſ. 6

7 Lord Mansfield's opinion upon this act. 223 (N)

8 By 3 Edw. 1. c. 20. treſpaſſers in fiſh ponds ſhall ſuffer three months impriſonment, &c. 516 ſ. 92

9 No ſalmon unleſs eighteen inches from the eye to the tail, or the ſpawn of ſalmon ſhall be deſtroyed in certain rivers, &c. ſ. 93

10 No ſalmon under 6lb. weight ſhall be ſent to London. ſ. 94

11 No ſalmon to be taken from April to Midſummer. ſ. 95

12 No nets called ſtalkers ſhall be uſed. ſ. 96

13 By 17 Rich. 2. c. 19. the lord mayor of London ſhall preſerve the fiſh in the Thames and Medway. ſ. 97

14 What *ſizes* other fiſh ſhall be of before they are taken. 5 9 ſ. 98

15 Of the kind of nets which may be uſed. *ibid.*

16 How offenders may be puniſhed. 518

17 No perſon ſhall take or have poſſeſſion of any unſizeable fiſh, or fiſh out of ſeaſon, or any ſmelt, not 5 inches long. ſ. 99

18 No perſons ſhall faſten nets over rivers to ſtand both day and night. 100

19 The penalty and rules for fiſhing on the coaſts of the ſea. *Page* 101, 102
20 No fiſh under certain ſizes ſhall be ſold except the ſame be ſold for or under 6*d.* a pound. 103, 104
21 Within what time lobſters ſhall be taken. 105
22 Rules reſpecting the importation of fiſh. 520

FINGER.

1 Cutting off, or diſabling, or weakening a man's hand or finger, is eſteemed *a maim.* 175 ſ. 2
2 It is puniſhable with fine and impriſonment. 176
3 By 22 & 23 Car. 2. c. 1. to diſable any limb or member, with intention to maim and diſfigure, is death without clergy. ſ. 4

FLEET.

1 By 22 Geo. 2. c. 33. every perſon in the *fleet* who ſhall waſte, embezzle, or not carefully preſerve any powder, ſhot, ammunition, or other ſtores and proviſions, their abettors, buyers and receivers, being perſons ſubject to naval diſcipline ſhall be puniſhed at the diſcretion of a court martial. 76 ſ. 20
2 And every perſon in the fleet who ſhall burn or ſet fire to any magazine, or ſtore of powder, or ſhip-boat, &c. &c. or the tackle thereto belonging, not then appertaining to an enemy, pirate, or rebel, on conviction by court martial, ſhall ſuffer death. *ibid.*
3 Whoever, in his majeſty's fleet, ſhall be guilty of profane curſing and ſwearing, they ſhall be puniſhed by the diſcretion of a court martial. 13
4 A court martial alſo ſhall condemn any perſon in the fleet guilty of ſodomy, to death. 10

FLOUR.—*Vide Bread.*

FLOUNDERS.—*Vide Fiſh.*

FOOTWAY.—*Vide Nuiſance. Highway.*

1 There are three kinds of ways, 1ſt a footway; 2d a pack and prime way, which is both a horſe and a footway; 3d a cart way. *Page* 366
2 A nuiſance in a footway is puniſhable at the leet. *ibid.*

FORCE.—*Vide Robbery. Black Act.*

1 To withſtand the authority of the king, in a violent and forcible manner, is an overt act of levying war. 54 ſ. 23
2 What degree of force a man muſt endeavour to reſiſt to excuſe him from the guilt of treaſon. *ibid.* (N) 3
3 By 25 Geo. 2. c. 10. by force to enter into any black lead mine, with intent to take and carry away any cawke, &c. is puniſhable by whipping or tranſportation. 218
4 Forcibly to enter any place with intent to deſtroy the looms, &c. in the linen, woollen, cotton, and ſilk, &c. manufacture, is felony without clergy. 239, 240

FORCIBLE ENTRY AND DETAINER.

1 By common law, a man, within proper time, might regain *his poſſeſſion* by force; and he may now juſtify the retaking of his *goods*, wrongfully withheld. 274 c. 64
2 But ſuch a repoſſeſſion of *lands* is now reſtrained. ſ. 2
3 On an action for a forcible entry, if the defendant proves his title to the lands, &c. he ſhall not pay damages to the plaintiff for *the force*; but he may be puniſhed as a diſturber of the public peace. ſ. 3
4 An indictment lies at common law for a forcible entry; but the actual force muſt be charged. *ibid.* (N) 1
5 By 2 Ed. 3. if arms which ſtrike a terror, are uſed in making the entry, the

the perſons authorized by that ſtatute (*Vide* page 266) may ſeize the arms and impriſon the offenders; but they cannot reſtate the party injured to his poſſeſſion. *Page* 275 ſ. 5
6 By 5 Rich. 2. c. 7. whoever ſhall make entry into lands, with *ſtrong hand*, and with multitude of people, ſhall ſuffer impriſonment. *ibid.* ſ. 6
7 By 5 Rich. 2. c. 2. juſtices, with the power of the county, may commit ſuch as hold forcibly after an entry made. ſ. 7
8 And he ſhall make a record of the fact, which is not traverſable, becauſe he acts not as a miniſter but as a judge. ſ. 8
9 He may alſo aſſeſs the fine for the offence. *ibid.*
10 But the commitment muſt be upon *a view* of the fact, or for want of finding ſufficient ſureties. *ibid.*
11 If the party traverſe the entry, or the force, or plead three years poſſeſſion, the juſtice may ſummon a jury and try the traverſe. *ibid.*
12 By 18 Hen. 6. c. 9. juſtices are empowered to examine the offence, and put the party intitled into full poſſeſſion. ſ. 9 10
13 For which purpoſe they may direct the ſheriff to impannel a jury, each having 40*s.* a-year. 277 ſ. 11
14 Penalty on jurors or ſheriffs neglecting their duty. *ibid.*
15 This power extended to all magiſtrates. ſ. 12
16 But this power ſhall not extend to diſpoſſeſs thoſe who have had poſſeſſion for three years. ſ. 13
17 By 31 Eliz. c. 11. this ſecurity confirmed, &c. the party may alledge the three years peaceable occupation in bar of reſtitution. But the fact, on being traverſed, may be tried by the juſtice, who may award coſts, &c. 278
18 If a leſſee or copyholder be ouſted, and the leſſor, or lord, diſſeized, reſtitution to the leſſee, or copyholder, is a reſeiſin of the freehold. ſ. 15
19 By 21 Jac. 1. c. 15. the court may grant reſtitution to termors, copyholders, tenants by *elegit*, ſtatute merchant and ſtaple. *Page* 278 ſ. 16
20 *Quære*, If a tenant by the verge be within the ſtatute.
21 A leſſor who ejects his leſſee, and is then forcibly put out of poſſeſſion, is not within any of the ſtatutes. 279
22 But in either of the laſt caſes, the juſtice, may remove the force and commit the offender. ſ. 18
23 What ſhall be eſteemed an entry. ſ. 19
24 The bare treſpaſs by a pretender to the lands, although armed, &c. unleſs he actually claim by circumſtances of force and terror is not an entry. ſ. 20
25 Aiders are principal offenders, although they do not actually enter. ſ. 22
26 One who continues forcibly, under a defeaſable title againſt him who has a right of entry, is within the ſtatutes. 280
27 But not one who barely agrees to a forcible entry, made to his uſe. ſ. 24
28 What entry is forcible. ſ. 25
29 It muſt be with actual *violence and terror*; not ſuch as the law implies in treſpaſs. ſ. 26
30 What degree of *violence* is neceſſary. *ibid.*
31 What circumſtances will amount to *terror*. 281
32 What DETAINER ſhall be adjudged forcible. ſ. 30
33 A forcible entry or detainer may be committed upon eccleſiaſtical poſſeſſions, as well as upon temporal, or incorporeal hereditaments, for which entry will lie; but not upon a way or eaſement. 282
34 Who may be guilty of this offence. ſ. 32
35 What ought to be the form of a record, upon the ſtatutes of forcible entry. ſ. 36 to p. 287 ſ. 44
36 Of what kind of poſſeſſion reſtitution is to be awarded. *ibid.* ſ. 45
37 To whom and in what manner ſuch reſtitution ought to be made. 288 ſ. 46
38 By whom and in what manner ſuch reſtitution may be awarded and given. ſ. 49

39 How reſtitution ſhould be barred by a continuance of poſſeſſion for three years. *Page* 289 ſ. 53
40 For what other cauſes ſuch reſtitution may be ſtayed. 291 ſ. 59
41 How ſuch a reſtitution may be ſuperſeded before it is executed. 292 ſ. 61
42 How ſuch a reſtitution may be ſet aſide after it is executed. ſ. 63

FORCIBLE MARRIAGE.

1 By 3 Hen. 7. c. 2. whoever ſhall take a maid, widow, or wife, againſt her will, their abettors, procurers, and knowing receivers, ſhall be reputed principal felons. 171 c. 42
2 By 39 Eliz. c. 9. all principals, or procurers, or acceſſaries, before ſuch offence, are excluded from clergy. ſ. 2
3 The indictment muſt ſet forth that the woman had lands, or goods, or was heir apparent, and alſo that ſhe was married or defiled. ſ. 3
4 So alſo it ought to ſtate, that the taking was for lucre. 172 ſ. 4
5 If a ſubſequent force is uſed, it is immaterial whether the original taking was voluntary or not. ſ. 5
6 Receivers are not principals unleſs they receive the woman; but a reception of the man only will make an acceſſary after the fact. ſ. 7
7 A ſubſequent conſent will not purge the offence, if the original taking be forcible. ſ. 6
8 *Privies*, who are no way *parties*, are not within the ſtatute. ſ. 8
9 A woman taken in one county and married in another, the offender may be tried in the laſt county. ſ. 9
10 A woman forcibly taken, may give evidence againſt the offender, although ſhe be married to him. (N) 5

FORDS.—*Vide Highways.*

FORE-TEETH.

It is ſaid that ſtriking out a man's fore tooth, ſhall be puniſhed by fine and impriſonment, as a *maim*, becauſe he is rendered thereby leſs able, in fighting, to *annoy* his adverſary. *Page* 175 c. 4

FOREIGN.—*Vide Coin.*

1 What places ſhall be conſidered as foreign. 65 ſ. 6

FOREIGN EDUCATION.—*Vide Education*

FOREIGN PRINCE.—*Enliſting.*

1 By 3 Jac. 1. c. 4. whoever ſhall go out of the realm, and, or to ſerve a foreign prince or ſtate, not having before taken the oath of obedience, ſhall ſuffer as a felon. 74 ſ. 1
2 And if any gentleman, or officer, ſhall do ſo, without being bound by two ſureties, not to be reconciled to the ſee of Rome, or enter into any conſpiracy againſt the king, he ſhall ſuffer as a felon. *ibid.*
3 By 9 Geo. 2. c. 30. whoever ſhall enliſt himſelf, or procure another to enliſt himſelf, or to go abroad, or on board of ſhip, with intent to enliſt himſelf in the ſervice of a foreign prince, without licence, ſhall ſuffer death without clergy. ſ. 16
4 By 29 Geo. 2. c. 17. if any ſubject ſhall accept of any commiſſion in the ſervice of the French king, without licence, ſhall ſuffer death without clergy. 75 ſ. 17
5 Whoever ſhall enter into the Scotch Brigade, in the ſervice of the States General, and ſhall not, within ſix months from the date of his commiſſion, take, and ſubſcribe, the oaths of allegiance and abjuration, and tranſmit a certificate thereof, to the ſecretary at war, ſhall forfeit 500*l.* half to the king, and half to the proſecutor. *ibid.*
6 Summoning a man to appear and defend himſelf, before a foreign prince, was anciently high treaſon. 49

And writing letters to a foreign prince, inviting him to invade the realm, is now high treaſon. *Page* 51
Soliciting a foreign prince, in amity with the crown, to invade the realm, is an overt act of *the intention* to levy war, and may be laid *as an overt act of compaſſing the king's death.* 56 (N) 7
It is ſo high an offence to prefer the intereſt of a foreign prince, that it is criminal to do any thing which may incline a man ſo to do. 91 ſ. 3

FORESTALLING.--*Vide Engroſſing.*

FORFEITURE.

If a wife incur the forfeiture of a penal ſtatute, the huſband may be made a party to an action or information for the ſame. 5
An offender executed by virtue of the writ *de hæretico comburendo*, forfeits neither land nor goods. 7 ſ. 10
The limitation of a forfeiture to the crown, in a ſtatute, is mere ſurplus. 26 ſ. 33
Whether a forfeiture is ſaved by the death of the party within the time limited for the payment of it. 14 ſ. 6
What ſhall be forfeited by *felo de ſe.* 103 ſ. 7
The forfeiture is ſaved by a pardon before inquiſition found. 104
After inquiſition, the forfeiture ſhall relate back to the time the mortal wound was given. *ibid.*
Nothing ſhall be forfeited as a deodand unleſs the party die within a year and a day. 101 ſ. 7
But if he die within the time, the forfeiture ſhall relate back to the time of the wound. *ibid.*

FORGERY.

Forgery is either by the common law or ſtatute. 335 c. 70
At common law, it conſiſts in falſly and fraudulently making or altering any matter *of record*; or any other *authentic* matter of a *public nature*; as a pariſh regiſter, any deed, or will. *Page* 335 c. 70 ſ. 1
The puniſhment is fine, impriſonment, and any corporal puniſhment. *ibid.*
If a man make a feoffment to one, and afterwards make a feoffment to another of the ſame lands, of *a date prior to the firſt*, it is forgery. 336
So alſo if he had paſſed only an equitable intereſt. *ibid.*
If a perſon, in drawing the will of another, inſert legacies of his own head, it is forgery. *ibid.*
If one finding anothers name at the bottom of a letter, and cauſes the writing to be cut off and a general releaſe to be written over the name, and then takes off the ſeal and fixes it to the releaſe, it is forgery. *ibid.*
To inſert in an indictment the names of thoſe againſt whom in truth it was not found, is forgery. *ibid.*
So alſo to make any fraudulent alteration of the form of a true deed in a material part of it. *ibid.*
As by making a leaſe of the manor of *Dale* appear to be a leaſe of the manor of *Sale*, by changing the D into S. *ibid.*
Or by making a bond for 500 *l.* appear to be for 5000 *l.* by an additional cypher. *ibid.*
Sir Edward Coke's opinion that a deed ſo altered is rather *falſe* than *forged*, controverted and denied to be law. *ibid.*
For forgery does not ſo much conſiſt in counterfeiting the hand and ſeal, as in endeavouring to give an appearance of truth to a mere deceit and falſity; and by force of ſuch falſity to give it an operation which in juſtice it ought not to have. 337
But a man who writes a deed in another's name and ſeals it in his preſence, and *by his command* is not guilty of this offence. *ibid.* ſ. 3
Neither ſhall an obligee be puniſhed *for forgery* who eraſes the word *libris*, and inſerts *marcis*; for it is alone prejudicial to himſelf. ſ. 4

16 But if it ſhould appear that this alteration was to prejudice a third perſon it is forgery; and otherwiſe it is *a miſdemeanor*. *Page* 337 ſ. 4

17 To write a will *officiouſly* is not forgery; although the teſtator becomes *non compos* before it is brought to him; for it is not writing without privity; but giving an inſtrument or falſe appearance, that conſtitutes forgery. ſ. 5

18 Non feaſance, as by leaving a legacy out of a will, is not forgery. ſ. 6

19 But perhaps otherwiſe if the omiſſion of one bequeſt cauſe a material alteration in the limitation of a bequeſt to another. *ibid.*

20 But in this caſe the firſt enquiry ſhould be, with what intention the omiſſion was made. *ibid.*

21 It is not material whether the forged inſtrument be made in ſuch a manner that if it were in truth what it is counterfeited for, it would be of validity or not. 338

22 All matters of record, from their high public importance, may become the ſubjects of forgery. *ibid.* ſ. 8

23 So alſo may a privy ſeal, a licence from the *exchequer* to compound debt, a certificate of holy orders, and a protection from a parliament man. ſ. 9

24 It is unqueſtionable that a man may be guilty at common law by forging *a deed*; and moſt probably by forging *a will*, but this is not ſettled. ſ. 10

25 It is laid down generally that the counterfeiting other writings of an inferior nature is not properly forgery. ſ. 11

26 As an order on a tenant to receive rent. *ibid.*

27 But they are puniſhable as cheats. *ibid.*

28 The diſtinction is, that the counterfeiting of writings of an *authentic public nature* is in itſelf criminal whether any third perſon be actually injured thereby or not; but that the counterfeiting of other writings of an inferior and *private nature* is no crime, unleſs ſome one receive a prejudice thereby. 339

29 OF FORGERY BY STATUTE. *Page* 339 ſ. 12

30 By 5 Eliz. c. 14. whoever ſhall falſely forge any deed, charter or writing ſealed, court roll, or the will of any perſon in writing to the intent that the eſtate, or freehold, or inheritance, to any lands, tenements, or hereditaments, freehold, or copyhold, or the right, title, or intereſt of any perſon therein, ſhall be moleſted, &c. or ſhall knowingly utter the ſame with the like intent, on conviction, by action of damages to the party grieved, ſhall pay double coſts and damages, be ſet in the pillory, have his ears cut off, his noſtrils ſlit and *ſeared*; forfeit all the profits of his lands, and ſuffer perpetual impriſonment. 339, 340

31 But the uttering ſhall not extend to any attorney, lawyer, or counſellor, who ſhews ſuch deed in evidence for his client. 339

32 And if ſuch forgery be of any charter, deed, or writing, with intent to claim any eſtate or intereſt for a term of years in any premiſes not being copyhold—or any annuity in fee-ſimple, fee tail, or for term of life or years— or if ſuch forgery be of any obligation, bill obligatory, acquittance, releaſe or diſcharge of any debt, account, &c. of any thing perſonal, the offender ſhall pay double damages, &c. and be ſet on the pillory as aforeſaid, have one of his ears cut off, and ſuffer impriſonment for one year, &c. 340

33 And whoever ſhall be convicted of any of the ſaid offences a ſecond time, he ſhall be guilty of felony without benefit of clergy. *ibid.* ſ. 14

34 But this conviction ſhall not corrupt the blood or bar the deſcent of lands, or dower, nor extend to the ſealing, &c. of ſuch inſtruments in the ſpiritual courts. *ibid.* 341

35 All juſtices of oyer and terminer and aſſize have juriſdiction over this offence. ſ. 15

36 A falſe cuſtomary of a copyhold manor is within the firſt branch of this act. 341 ſ. 17

So alſo is a leaſe for years or a grant of a rent charge for years in the name of one who is ſeized of a freehold or inheritance. *Page* 341 ſ. 18

The ſecond branch of the act means only ſuch forgeries as relate to an eſtate or intereſt in *eſſe* before. 341. ſ. 18

A will of one poſſeſſed of ſuch eſtate mentioning a bequeſt thereof is within the ſecond branch, although the wills are not mentioned. ſ. 19

The forgery of a leaſe of lands in Ireland is not at all within the ſtatute. ſ. 20

Nor is *a deed* containing a gift of mere perſonal chattles. 342. ſ. 21

But a ſtatute merchant, or a recognizance in nature of a ſtatute ſtaple, are within the meaning of the word *obligation*—But a ſtatute ſtaple itſelf is not, for it does not require a ſeal. ſ. 22

To publiſh a deed after *information* of its falſity, is an uttering within the act. ſ. 23

The double damages (*Vide Supra* No.) ſhall be governed by the penalty and not by the true debt appearing in the condition. ſ. 24

A ſecond conviction for a forgery of a different nature from the firſt, will make the offender guilty of the felony. ſ. 25

The proſecution muſt ſtrictly purſue the words of the ſtatute. ſ. 26

But an indictment ſetting forth that the writing was indented without adding it was ſealed is ſufficient. *ibid.*

And *ſuper caput ſuum proprium* is a good *legal* tranſlation of the words "upon his own head." *ibid.*

A verdict finding *de tranſgreſſione & forgeria, predictus prout ſuperius indictamento ſupponitur* is ſufficient. 343

But the legiſlature have inflicted *death*, in the firſt inſtance, on the crime of forgery in the following caſes. *ibid.* (N)

By 8 & 9 Will. 3. c. 20—To forge the *common ſeal* of the bank of England—or any *ſealed* bank bill in the name of the directors—or any bank note whatſoever ſigned for them—or to eraſe the indorſement on any bank bill or note. *Page* 204, 205

And to efface *the red ink mark* uſually made upon them when paid, is *eraſing* an indorſement within this act. *ibid.* (N)

So alſo to alter the amount of the ſum is held to be forgery *ibid.*

And the caſhier *whoſe name is ſigned* is an admiſſable witneſs to prove the forgery. *ibid.*

By 11 Geo. 1. c. 9.—To utter or demand the money for any ſuch forged, or altered bank bill or note with intention to defraud is *ſingle felony*. ſ. 2

By 12 Geo. 1. c 32. to forge the name of any of the caſhiers to any inſtrument in writing whatſoever to obtain the property of any of the ſuitors in chancery, or any perſon whatſoever, is felony without clergy. ſ. 3.

By 15 Geo. 2. c. 13. to alter any bank note, bank bill, dividend warrant, bond or obligation under the common ſeal of the bank, or any indorſement thereon, or to utter the ſame with intention to defraud any perſon, is death. ſ. 4

By 25 Geo. 3. c. 2. to forge any exchequer bill, before the ſame ſhall be paid off and cancelled, or any exchequer bills to be received, or any indorſement thereon, &c. with intent to defraud, &c. is death. 207

By 9 Geo. 1. c. 12. to forge any exchequer order for the payment of annuities—or the name of any of the proprietors, &c. is felony without clergy. *ibid.* ſ. 8

To forge any ſtamp or mark, ordered to be made by the ſeveral ſtamp acts (*which are enumerated*) on any vellum, parchment, or paper, *with intention to defraud his majeſty* is felony without clergy. *ibid.* ſ. 9

By 13 Geo. 3. c. 56. to forge the ſtamp or mark uſed in making gold and ſilver plate in purſuance of 12 Geo. 2. c. 26. is tranſportation for fourteen years. 208

62 But by 24. Geo. 3. c. 53. to commit this offence in the manner therein described, is death without clergy. *Page* 208 f. 10

63 One of the marks is a lion *paſſant*, and if the indictment deſcribe the lion to be *rampant* it is fatal. (N)

64 By 24 Geo. 3. c. 20. the manufactures of Sheffield are exempted from the injunctions of theſe acts. (N)

65 By 13 Geo. 3. c. 56. to forge the ſtamps on ſilks, callicoes, linens and ſtuffs printed in Great Britain is felony without clergy.

66 By 14 Geo. 3. c. 72. ſ. 8, to forge the ſtamps on printed cottons, is death.

67 By 9 Ann. ſt. 1. c. 27 ſ. 51. to forge the common ſeal of the South Sea company or any bond or obligation under the ſame, or to utter, &c. is felony without clergy. 208 ſ. 11

68 By 8 Geo. 1. c. 22. to forge any letter of attorney, or other authority to tranſfer any ſhare of South Sea ſtock, or to receive any dividends or part thereof, or the name of any of the proprietors, &c. is felony without clergy. 208, 209

69 By 25 Geo. 3. c. 57. to forge any lottery orders, &c. is felony without clergy. 209 ſ 12, 13

70 By 6 Geo. 1. c. 8. and 14 Geo. 2. c. 37 to forge the common ſeal of the London or Royal Exchange Aſſurance, or any policy, bill, bond or obligation under the ſame, &c. is death. 209 ſ. 14

71 By 12 Geo. 1. c. 32. to forge the hand of the accountant general, regiſter, clerk of the report office in chancery, to obtain the money of any of the ſuitors is death. 210 ſ. 15

72 By 4 Geo. 2. c. 18 to forge a Mediterranean paſs, is felony without clergy. 211 ſ. 17

73 By 8 Geo 2. c. 6. to forge any entry of acknowledgment of any bargainer in bargain and ſale in the regiſtry of York whereby the freehold or inheritance ſhall be moleſted, incurs the penalties of 5 Eliz. (*Vide Supra.* No.) 211 ſ. 19

74 By 26 Geo. 2. c. 33. to forge any marriage regiſter, or any licence of marriage. *Page* 211, 21

75 By 31 Geo. 2. c. 10. to forge any letter of attorney, bill, ticket, certificate, aſſignment, laſt will, or any other power or authority whatſoever in order to receive the money or wages due to any ſeamen, &c. is death without clergy. 21

76 By 9 Geo. 3. c. 30. to utter the ſame with intention to defraud any perſon whatſoever is felony without clergy. 21

77 By 31 Geo. 2. c. 22. & 4 Geo. 3. c. 25. to forge any letter of attorney, or other authority or inſtrument to tranſfer, ſell, aſſign or convey any ſhare of any capital ſtock or funds, or to receive any dividend attending ſuch ſhare, or any annuity, or ſhall forge the name of proprietor, &c. he ſhall ſuffer death without clergy. 212, 21

78 By 32 Geo. 2. c. 14. to forge the mark or hand of the receiver of the poſt fines is death *ſans* clergy. 21

79 By 4 Geo. 3. c. 24. to counterfeit the *frank* upon any letter is tranſportation 7 years. *ibid.* ſ. 2

80 By 2 Geo 2. c. 25. to forge, &c. any deed, will, teſtament, bond, writing obligatory, bill of exchange, promiſſory note for the payment of money, indorſement or aſſignment thereon, or any acquittance or receipt either for money or goods with intention to defraud any perſon, or by 31 Geo. 2. c. 22. any corporation, or ſhall utter, &c. is felony without clergy. 210 ſ 1

81 By 7 Geo. 2 c. 22. to forge, &c. any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for the payment of money or delivery of goods with intention to defraud any perſon, or by 18 Geo. 3 c. 18. any corporation, is death without clergy. 211 ſ. 1

82 Forgery may be committed in the name of a perſon who never had exiſtence. 210 (N)

83 Lord

13 Lord Coke's definition of forgery *Vide Supra.* (N) is too narrow. *Page* 201

14 If a perſon finds a promiſſory note and indorſes it in a fictitious name in order to get it diſcounted—this is forgery. *ibid.*

15 In forgery perfect ſimilitude is not neceſſary, it made with an aptneſs to impoſe, it is ſufficient. (N)

16 The *water mark* is not eſſentially neceſſary in a forgery of a bank note. *ibid.*

17 "As follows" is a ſufficient aver ment that the tenor of a forged receipt is ſet out. (N) 3

18 It is only neceſſary to aver a gene ral intent to defraud, without ſetting forth the particular manner in which the fraud was to take effect. *ibid.*

19 In forgery of a will it is not neceſſary to charge it "the laſt will" "a paper writing purporting to be the laſt will" is ſufficient. *ibid.*

20 What ſpecies of "order for the payment of money or the delivery of goods" may be the ſubject of forgery. 211 (N) 4

21 What evidence is neceſſary to prove forgery of a bill of exchange, &c. 213 (N)

FORNICATION.

1 All open lewdneſs, groſsly ſcandalous, are puniſhable by the temporal judges, by fine and impriſonment, &c. 10

Vide Bawdy-houſes.

FOREST.—*Vide Fern. Black Act. Deer Hunters.*

1 If treſpaſſers in any foreſt, &c. will not render themſelves to the keepers, they may be ſlain by force of the ſtatute *de malefactoribus in parcis.* 107 ſ. 15

FORTUNE-TELLERS.—*Vide Vagrants.*

1 By 9 Geo. 2. c. 5. whoever ſhall undertake to tell fortunes, or pretend by craſty ſcience, to diſcover ſtolen goods, ſhall be impriſoned for one year, ſtand four times in the pillory, and find ſurety as the court ſhall think fit. *Page* 9

2 By 17 Geo. 2. c. 5. all jugglers, fortune-tellers, &c. &c. ſhall be deemed rogues and vagabonds. *ibid.*

FOSSILS.—*Vide Highways.*

FOXES.—*Vide Larceny.*

FRAUDS.—*Vide Cheats. Deceit. Permits.*

FREEHOLD.

1 The goods of which larceny may be committed, ought to be no way annexed to the freehold. 141 ſ. 21

2 Therefore it is no larceny at common law to ſteal corn or graſs growing, or apples on a tree, or lead on a church. *ibid.*

3 But by 43 Eliz. c. 7. to cut corn or grain growing, to rob orchards, to break the fences or trees therein, to the intent to take the ſame away, or to cut woods, underwoods, poles, &c. *not being felony by the laws of this realm*, is made puniſhable at diſcretion. 214

4 By 15 Car. 2. c. 2. the houſes of ſuch offenders may be ſearched. *ib.*

5 By 1 Geo. 1. c. 48. to deſtroy any timber or fruit tree, is fine and impriſonment. *ibid.*

6 By 6 Geo. 1. c. 16. to deſtroy any wood ſprigs, trees, poles, thorns, quickſets, &c. is liable to the ſame puniſhment. 215

7 By 9 Geo. 1. c. 22. to deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit, is felony without clergy. ſ. 4

8 By 6 Geo. 3. c. 36. whoever, *in the night*, ſhall damage or deſtroy any timber, tree, &c. or any ſhrub or plant, of the value of 5*s.* &c. &c. ſhall be tranſported ſeven years. ſ. 5

9 By 6 Geo. 3. c. 48. whoever ſhall deface or damage any timber tree, in any of the king's foreſts, ſhall forfeit 20*l.* &c. for the firſt offence; thirty pounds, &c. for the ſecond; and for the third, be tranſported for ſeven years. *Page* 216

10 And whoever ſhall cut or deſtroy any ſhrub, root, or plant, in any cultivated lands, ſhall forfeit, not exceeding 40*s.* for the firſt offence; 5*l.* for the ſecond; and for the third he may be tranſported for ſeven years. *ibid.*

11 By 13 Geo. 3. c. 32. whoever ſhall ſteal or deſtroy any turnips, potatoes, cabbages, parſnips, peaſe, or carrots, growing in any garden: or by 31 Geo. 2. c. 35. any madder roots, ſhall forfeit 10*s.* 217 f. 11

12 By 25 Geo. 2. c. 10. whoever ſhall break into a black lead mine, or being there, ſhall ſteal any lead, cawke, &c. *may be* tranſported for ſeven years. 218

13 By 4 Geo. 2. c. 32. and 21 Geo. 3. c. 68 whoever ſhall break, with intent to ſteal any lead, iron bar, iron grate, iron palliſadoes, or iron rail; or any copper, braſs, or bell metal utenſil, or fixture, being fixed to any dwelling-houſe, &c. &c. he may be tranſported for ſeven years. 218, 219

FREGIT.—*Vide Burglary.*

FRENCH KING—*Vide Foreign Prince*

FRUIT—*Vide Freehold. Larceny.*

1 By what meaſure it ſhall be ſold. 522 f. 120

2 The duty on apples and pears. f. 121

FUNDS.—*Vide Forgery.*

FURZE.—*Vide Fern.*

G.

GAMING.

1 ALL common gaming-hou are indictable as nuiſanc *Page* 362 f.

2 By 10 & 11 Will. 3. c. 17. all m chievous games, called lotteries, (*inter alia*) dice, lots, cards, & are declared nuiſances, and who ver ſhall keep ſuch lottery, ſha forfeit 500*l.* &c. 3

3 By 9 Ann. c. 14. f. 8. to aſſault a beat any perſon on account of m nies, won by gaming is forfeitu of goods, and two years impriſo ment. 264, 265, 2

4 By 16 Car. 2. c. 7. to uſe any frau or unlawful device, in playing any paſtime or game, or by bea ing a ſhare in the ſtakes, or by be ting on the ſide of ſuch as ſhall pla incurs a forfeiture of treble the va lue. 34

5 By 9 Ann. c. 14. if any perſon ſha by any fraud or ſhift, deceit, ill prac tice, &c. in playing at any of th games mentioned in the act, or b bearing ſtakes, or by betting, & won any ſum of money, or other va luable thing, on conviction, by in formation or indictment, he ſha forfeit five times the value, be deem ed infamous, and ſuffer corpora puniſhment, as in caſes of perjury 345 f. 9

GAOLER.

1 To threaten or aſſault a gaoler fo keeping a priſoner in ſafe cuſtody is a contempt of the law, and high ly puniſhable by fine and impriſon ment. 90 f. 1

2 If a criminal, in endeavouring t break the gaol, aſſault his gaoler, h may be lawfully killed by him *i the affray.* 107 f. 1

3 If a gaoler, by *dureſs* of impriſon ment, compel a man to accuſe a innocent perſon, who, on his evi dence, is condemned and executed this is homicide in the gaoler. 118 f.

4 A gaoler knowing a priſoner to be infected with an epidemical diſtemper, confines another priſoner againſt his will, in the ſame room with him, by which he catches the infection, and is ſuffered to continue there and die, this is a felonious killing. *P.* 119 (N)
So alſo, to confine a priſoner in a damp room, denying him the conveniences which decency requires, by which filth he catches a diſtemper and dies, it is felonious. *ibid.*
Gaolers are not to behave with wanton cruelty to their priſoners. *ibid.*
By 14 Ed. 3. c. 10. if any gaoler, or under-keeper, by dureſs, make any priſoner to become an appeller, againſt his will, he is guilty of felony. 194
It is immaterial whether the approvement be true or falſe, or whether the appellee be acquitted or condemned. *ibid.*
An enumeration of all the ſtatutes relating to gaolers, with the ſubſtance of the ſubjects of them. *ibid.* (N)
How a gaoler ſhould be puniſhed for miſuſing his priſoner. 311 f. 2

GARDENS.

By 45 Eliz. c. 10. to rob any orchard or garden; to break the fences therein; or to dig or take up any fruit tree, on conviction, by one witneſs, before one magiſtrate, the offender ſhall make compenſation, or be publicly whipped. 214
By 1 Geo. 1. c. 48. whoever ſhall deſtroy any fruit tree, ſhall be confined to hard labour for three months, &c. &c. *ibid.*
By 9 Geo. 1. c. 22. whoever ſhall deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſhall reſcue any offender, or procure any perſon to commit ſuch offence, he ſhall ſuffer death without clergy. 215
By 6 Geo. 3. c. 36. whoever, in the night time, ſhall pluck up or deſtroy any root, ſhrub, or plant, of the value of 5s. growing, or being in a garden ground, nurſery, or other incloſed ground, their aiders, &c. ſhall be tranſported for ſeven years. *Page* 215
By 6 Geo. 3. c. 48. whoever ſhall pluck up or deſtroy any root, ſhrub, or plant, out of any field, nurſery, garden, or garden-grounds, or other cultivated lands, ſhall forfeit, not exceeding, 40s. for the firſt offence; not above 5 l. for the ſecond; and for the third ſuffer tranſportation ſeven years. 216
By 13 Geo. 3. c. 32. whoever ſhall ſteal or maliciouſly deſtroy any turnips, potatoes, cabbages, parſnips, peaſe, or carrots, or by 31 Geo. 2. c. 35. any madder roots, growing or being in any garden, *or lands*, on conviction by one witneſs, before one juſtice, within 30 days, ſhall forfeit, not exceeding 10s. and the value of the things taken or deſtroyed, &c. &c. 217
By 4 Geo. 2. c. 32. to rip, with intent to ſteal, any lead, iron bar, iron grate, iron paliſadoe, or iron rail, whatſoever, or by 21 Geo. 3 c. 68. any copper, braſs, bell metal utenſil, or fixture, being in any garden, orchard, court, yard, fence, or outlet, belonging to any dwelling-houſe or other building, their aiders, &c. or ſhall buy or receive the ſame, ſhall be guilty of felony, and may be tranſported for ſeven years, or impriſoned for one year, and whipped three times, &c. 218, 219

GARMENTS.

By 6 Geo. 1. c. 23. to aſſault any perſon in the public highway with intent to ſpoil their cloaths or garments is tranſportation for ſeven years. 238
If the aſſault therefore is made in the playhouſes or other buildings it is not within the act. *Fielding's penal Laws.*

GATE.—*Vide Fences.*

Erecting a new gate in a highway is a nuiſance becauſe it intercepts that free,

free, open, and legal paſſage, the people before enjoyed. *Page* 362 ſ. 9. 404 ſ. 50

2 But where a gate has continued time out of mind it ſhall be intended that it was ſet up at firſt by conſent, or laying out the road, in which caſe the people never had a free paſſage. 363

3 A gate that is a common nuiſance may be pulled down by any perſon. 364 ſ. 12

4 By 6 Geo. 1. whoever ſhall break down the gates, &c. of ſuch places as the act deſcribes ſhall be committed to the houſe of correction, &c. 192 ſ. 2

5 The puniſhment for deſtroying turnpike gates. 192, 193

GAZETTE.—*Vide Smuggling. Quarantine.*

GENERAL ISSUE.

1 May be pleaded on the ſtatute 19 Geo. 2. c. 21 againſt profane curſing and ſwearing. 12 ſ. 4

2 On 13 Geo. 3. c. 78. for regulating highways. 420

3 On 13 Geo. 3. c. 84. for turnpike roads. 442

4 On 9 and 10 Will. 3. c. 7. concerning ſquibbs. 224

5 On 9 & 10 Will. 3. c. 41. againſt embezzling naval ſtores. 562

6 On 6 Ann. c. 31. for preventing fire. 197

7 On 30 Geo. 2. c. 24. againſt gaming. 469

8 On 17 Geo. 2. c. 5. of vagrants. 576

9 On 29 Geo. 2. c. 30. for ſtealing iron. 232

10 On 31 Geo. 2. c. 29 & 40. bread 486 ſ. 5

11 On 31 Geo. 2. c. 40 hay. 52 ſ. 116

GESTURES.—*Vide Manſlaughter.*

1 No affront by bare words or geſtures, however falſe, malicious, or aggravated, is ſufficient provocation to excuſe from the guilt of murder. *Page* 124 ſ. 3

GOD.—*Vide Religion. Lord's Day. Common Prayer.*

1 All blaſphemies againſt GOD, as denying his being or providence, or reproaching JESUS CHRIST; or falſely pretending to extraordinary commiſſions from GOD are high offences, by the common law, puniſhable with fine, impriſonment and ſuch infamous corporal puniſhment as the court ſhall direct. 10 c.

2 By 9 and 10 Will. 3. c. 32. denying any one of the perſons in the holy Trinity to be God, or maintaining that there are more gods than one &c. on conviction, at Weſtminſter or aſſizes, renders the offender incapable of any office for the firſt—diſabled to ſue, &c. for the ſecond offence. 7 ſ. 1

GOLD.—*Vide Coin.*

1 The king by his prerogative is intitled to all gold mines. 70

2 Endeavours to find out the *Philoſophers ſtone* being found prejudicial the 5 Hen. 4. c. 4. made it felony to uſe the craft of multiplication, but is repealed by 1 W. & M. c. 30. 73, 74

3 By 8 and 9 Will. 3. c. 26. whoever ſhall blanch copper, &c. or deal in any malleable compoſition or mixture of metals, which ſhall be heavier, and look and touch like ſtandard gold he ſhall be guilty of felony. 71 ſ. 2

4 The ſtandard of gold conſiſts in two carrats of copper melted with twenty-two carrats of fine gold. 70 (N) 1

5 The king cannot by his prerogative alter the ſtandard. *ibid.*

GOLDSMITH.—*Vide Bullion.*

1 By 6 & 7 Will. 3. c. 17. no molten ſilver ſhall be ſtamped unleſs it be marked and ſtamped at Goldſmith's Hall

Hall, and certified under the hand of one of the wardens of the Goldſmiths that oath had been made by the owner and one credible witneſs that no part thereof was the current coin of the kingdom, nor the clippings thereof, nor plate, &c. *Page* 72, 73
No broker not being a trading goldſmith or refiner of ſilver ſhall buy or ſell any bullion on pain of ſix months impriſonment. 73 ſ. 9

GOODS.—*Vide Stolen Goods. Uſury.*

GOOD BEHAVIOUR.——*Vide Behaviour. Surety. Recognizance.*

By 34 Ed. 3. c. 1. juſtices of peace are empowered to reſtrain offenders, rioters, &c. and to take and arreſt all thoſe they found by indictment *or ſuſpicion*, and put them in priſon, and to take of all them that be not of *good fame* ſufficient ſurety and mainprize for their good behaviour. 26
Perſons of evil fame includes perſons of ſcandalous behaviour in other reſpects than thoſe relating to the peace. *ibid.* ſ. 2
A man may be bound to good behaviour for offences *contra bonos mores*, as haunting bawdy houſes with women of bad fame; keeping bad women in one's houſe; ſpeaking contemptuouſly of a juſtice or a mayor, though not in the execution of office, and alſo of a conſtable in the execution of his office. *ibid*
But no one ought to be bound to good behaviour for raſh, quarrelſome, or unmannerly words, unleſs they tend to break the peace, or abuſe the government. *ibid.* ſ. 3
But there are no preciſe rules, and the magiſtrate has a diſcretionary power. 262
Surety may be taken of all he may juſtly ſuſpect to be dangerous, quarrelſome or ſcandalous, as thoſe who ſleep in the day and wake in the night; or keep ſuſpicious company, reputed robbers, &c. eaves droppers, common drunkards; and all perſons whoſe conduct renders them *of evil fame*. *Page* 262
7 A variety of inſtances enumerated in which ſurety for behaviour has been taken. *ibid* (N) 1
8 By 1 Mar. ſt. 2. c. 3. it may be required of perſons *convicted* of diſturbing divine ſervice. 309
9 By 5 Eliz. c. 21, 22 & 23 Car. 2. c. 25. for offences againſt the game laws. 187
10 By 43 Eliz. c. 23. for entertaining outlawed felons.
11 By 1 Jac. 1. c. 2 . for going abroad infected with the plague. 241
12 By 3 Jac. 1. c. 13.—5 Geo. 1. c. 15. for unlawfully hunting in parks. 187
13 By 4 Jac. 1. c. 5. & 21 Jac. 1. c. 7. on conviction a ſecond time for drunkenneſs. 466
14 By 1 Will. & M. c. 8. for refuſing to take the oaths. 97, 98
15 By 5 Will. & Mary, c. 13. of felons after pardon,
16 By 9 Ann. c. 14. of perſons unlawfully gaming. 266
17 By 1 Geo. 1. c. 21. diſorders in dock yards.
18 By 1 Geo. 1. c. 48. deſtroying timber. 214 ſ. 2
19 By 9 Geo. 2. c. 5. pretending witchcraft. 9
20 By 8 Geo. 2. c. 20. turnpikes. 193 ſ. 7
21 By 9 Geo. 2. c. 35. aſſiſting in running goods. 227

GOVERNMENT.

1 All contempts againſt the king's government are criminal and puniſhable with fine, impriſonment, and ſometimes pillory at the diſcretion of the court. 92 c. 23
As charging the government with oppreſſion or weak adminiſtration. ſ. 1
3 Or doing an act which *impliedly* encourages rebellion. ſ. 2
4 Endeavouring to change the meaſures of government by alarming the king's mind. ſ. 3

5 Spreading falſe rumours reſpecting the government. *P.* 92 c. 23 ſ. 4
6 Charging the king with a breach of his coronation oath. ſ. 5
7 Doing any thing which may weaken the government. 93 ſ. 6
8 And it is ſaid that to refuſe in a foreign part to pay the uſual cuſtom is a contempt of government for which a man may be indicted ſ. 7
9 The public peace is the end of all government. 94

GRADUATED STONES.—*Vide Highways.*

GRAMMAR SCHOOL.

1 By 1 Jac 1. c. 4. no perſon ſhall keep any ſchool or be a ſchool-maſter out of the univerſities or colleges of this realm, except it be in ſome public or free grammar ſchool, &c: on pain of of 40s. 18 ſ. 2

GRAIN.—*Vide Granary. Bread.*

GRANARY.

1 By 11 Geo. 2. c. 22. whoever ſhall deſtroy any ſtorehouſe, granary, or other place where corn ſhall be then kept in order to be exported; or ſhall unlawfully enter any ſuch place and take and carry away any corn, flour, meal or grain therefrom or ſhall throw abroad or ſpoil the ſame, ſhall be tranſported for ſeven years. 243 ſ. 2
2 The hundred liable to the amount of 100 l. 244

GRAND JURY.

1 The grand jury cannot find a bill true for part, and falſe for part, as petty jury may. 286
2 But an indictment of *two counts* one for a riot, indorſed by the jury *ignoramus*, the other for an aſſault returned *billa vera*, is good——*R. Fieldhouſe.* *Page* 2
3 The court may impoſe an immedia fine on a perſon who refuſes to gi evidence before the grand jury co cerning a crime. 91 ſ.

GRAND LARCENY.—*Vide Larce*

1 Grand larceny is a felonious a fraudulent *taking and carrying aw* the mere perſonal goods of anoth not from the perſon, nor out of h houſe, above the value of 12 d. 1

GRANT.—*Vide Monopoly. Gunpowde*

1 On a forfeiture of goods for "a fence from church" the king cann *grant* the goods over, till inquiſitio found. 29 ſ.
2 All grants of monopolies relating any known trade are void by t common law. 470 ſ.
3 By the common law the king's gra to any particular corporation of t ſole importation of any merchandi is void. 470, 47
4 The grant of the ſole ingroſſing wills, and inventories in a ſpiritu court, or of the ſole making of bill pleas, and writs in a court of la to any particular perſon, is voi 470 ſ.
5 A grant for the ſole making, im porting, and ſelling of playi cards, is void. ſ.
6 Nothing can exclude a ſubject fro trade, but an act of parliament. (N
7 But the king may grant to any on the ſole uſe of any art invented, o firſt brought into the realm by t grantee. ſ.
8 The king may grant to particul perſons the ſole uſe of ſome par ticular employments; as printin the holy ſcriptures, law books, &c *ibi*
9 By 21 Jac. 1. c. 3. all grants monopolies are declared void. 47
10 All perſons diſabled to uſe the ſ.
11 A

11 And the force and validity of ſuch grants ſhall be heard and determined by the common law. *Page* 472 ſ. 10
12 How perſons aggrieved by ſuch grants ſhall be relieved. 472, 473
13 But this ſtatute ſhall not extend to *grants of priviledge*, for the term of fourteen years, for the ſole working or making of any new manufacture, within this realm, to the true and firſt inventors. *ibid.* ſ. 14
14 Manufactures newly brought into the realm, are within this grant of privilege. *ibid.*
15 But it is provided that ſuch grants ſhall not be contrary to law, nor miſchievous to the ſtate, &c. *ibid.*
16 Nor ſhall they, in any wiſe prejudice the grants, to corporations or companies, &c. 474 ſ. 19
17 Sundry other exceptions out of this ſtatute. ſ. 20, 22

GRASS.

1 It is no larceny, by the common law, to ſteal corn or graſs growing, but a bare treſpaſs. 143

GRAVERS.—*Vide Engravings.*

GRAVESEND.

1 For the offence of ſurcharging boats, paſſing and navigated between Graveſend and Windſor. 569

GREAT SEAL.

1 By 23 Ed. 3 c. 2. if a man do counterfeit the king's great or privy ſeal, he ſhall be guilty of high treaſon. 61 ſ. 40
2 This extends to aiders and conſenters as well as to actors. ſ. 49
3 But no attempt to counterfeit either of them, will amount to this crime. ſ. 50
4 Nor is fixing the great ſeal to a patent, without a warrant for ſo doing, high treaſon. ſ. 51
5 Nor is any alteration of the matter of an inſtrument, to which the ſeal is affixed, a counterfeiting of it. *Page* 61 ſ. 52
6 By 7 Ann. c. 21. to counterfeit the ſeals uſed in Scotland is high treaſon. *ibid.*

GROUSE.—*Vide Fern.*

GRUDGE.—*Vide Homicide.*

1 If two perſons fight, *on malice*, are reconciled, and after fight again, it ſhall not be *preſumed* that they fought upon the *old grudge*. 124 ſ. 38

GUAGER.—*Vide Public-Houſe.*

GUEST.

1 A gueſt who has a piece of plate ſet before him in an inn, may be guilty of felony in fraudulently taking it away. 136 ſ. 6
2 If an inn-keeper refuſe either to receive a traveller, as a *gueſt*, into his houſe, or to find him victuals or lodging, upon his tendering him a reaſonable price for the ſame, he may be ſued by action for damages, and alſo indicted and fined at the ſuit of the king. 452 ſ. 2.
3 And it is ſaid that the conſtable may compel him to receive ſuch gueſt. *ibid.*

GUDGEONS.—*Vide Fiſh.*

1 The uſual nets for taking them may be uſed, provided they are not uſed for fiſh prohibited to be taken by ſuch nets. 517

GUILT.—*Vide Infant. Lunatic. Feme Covert.*

1 Thoſe who, from weakneſs or infirmity of mind, are incapable of underſtanding what the law is; and thoſe who,

who from their ſubjection to the power of others, are incapable of conforming to its dictates, ſhall not be found guilty for their diſobedience. *Page* 1

2 But a voluntary cauſe of diſobedience, as drunkenneſs, will not excuſe the guilt of an offender. 3 ſ. 6

3 Caſualty and misfortune are exemptions from guilt. 5 (N)

4 So alſo are ignorance and miſtake, compulſion and neceſſity. *ibid.*

5 But every offender muſt prove theſe exemptions, unleſs they ariſe from the evidence againſt him. *ibid.*

GUINEA.—*Vide Coin*

1 The impreſſion of a guinea being made on a piece of hammered gold, not round, and in an impaſſable ſtate, is not a counterfeiting of the current coin. 62 ſ. 55 (N) 13

2 By 15 Geo. 2. c. 28. to waſh, gild, or colour any lawful or counterfeit ſhilling, or a ſixpence, or add to, or alter the impreſſion of either ſide of ſuch ſhilling or ſixpence, with intent to make the ſame reſemble, or look like, or paſs for a guinea or a half guinea, or to aid or counſel therein, &c. is high treaſon. 65 ſ. 64

GUINEA PEPPER.—*Vide Ale and Beer*, No. 4.

GUN-POWDER.

1 By 21 Jac. 1. c. 3. againſt grants of monopolies, it ſhall not extend to grants concerning digging, making or compounding of ſaltpetre, or gun-powder, &c. 474, 475

2 By 16 Car. 1. c. 21. *all perſons* may import, make, and ſell gunpowder, or the materials thereof, notwithſtanding any inhibition. 475

GUN.

1 To fire a gun among a multitude of people, is evidence of a felonious intent, and, if death enſue, it will be murder. *Page* 113 ſ. 1

GYPSIES.—*Vide Egyptians.*

H.

HABEAS CORPUS.

1 A man committed by the ſpiritual court, for hereſy, may ſue out a *Habeas Corpus* to the King's Bench. 6, ſ. 7

HABIT.

1 By 5 Geo. 1. c. 4. If any mayor, bailiff, or other magiſtrate, ſhall wilfully reſort to any other place of divine worſhip than the church, in the gown or any other peculiar habit of his office, &c. &c. he ſhall be diſabled. 17, 18

HABITATION.—*Vide Houſe. Burglary. Arſon. Affray.*

HACKNEY COACHMEN.

1 By 9 Ann. c. 23. hackney coachmen are permitted to work within the bills of mortality on a Sunday. 12

HALFPENNY.

1 By 15 Geo. 2. c. 28. whoever ſhall counterfeit a halfpenny or farthing, their aiders, &c. ſhall ſuffer two years impriſonment, and find ſurety for two years more. 71, 72

2 By 11 Geo. 3. c. 40. whoever ſhall coin a halfpenny or a farthing, his aiders. &c. ſhall be guilty of felony. 72

3 By 15 Geo. 3. c. 28. to file, alter, waſh, or colour; or to add to, or alter the impreſſion of a halfpenny or farthing,

farthing, with an intent to make them look like, or paſs for either a ſixpence or a ſhilling, or to aid, &c. is high treaſon. *Page* 65 ſ. 64

HAND.—*Vide Maim. Finger.*

HARES.—*Vide Lord's Day. Black Act. Hunters.*

HARBOUR. *Vide Jeſuit. Church.*

1 By 3 Jac. 1. c. 4. whoever ſhall harbour, in his houſe, any ſervant, ſojourner, or ſtranger, &c. who ſhall not go to church, &c. ſhall forfeit 10*l.* a month. 31 c. 11

HAWKS.

1 Hawks reclaimed may be the ſubject of larceny, not only at common law, in reſpect of the great value of this bird, but by force of 37 Ed. 3. c. 19. 143 ſ. 23

2 But the ſtealer muſt know them to be reclaimed. *ibid.*

3 For not poſſeſſing *animus revertendi*, they are to bo conſidered *feræ naturæ* and therefore common property. 144 ſ. 26

4 So alſo it ſeems felony to ſteal the eggs or the young of reclaimed hawks, *ſed quere.* But the 1 Hen. 7. c. 17. has appointed a leſs puniſhment to this offence. ſ. 27

HAY and STRAW.

1 By 2 W. & M. c. 8. every truſs of old hay, for ſale within the bills of mortality, between 1ſt. Auguſt and June, ſhall weigh 56lb. and new hay from June to Auguſt, 60lb. on pain of 16*d.* a truſs. 521 ſ. 115

2 By 31 Geo. 2. c. 40. all ſtraw within the bills of mortality, ſhall be ſold in bundles weighing 36lb. on pain of 1*s.* for every bundle deficient. *Page* 521 ſ. 116

3 And every truſs of hay ſhall be found and good, and both the bands not exceed the weight of 5lb. on pain of 3*d.* for every bundle. ſ. 117

4 No ſaleſman ſhall buy hay or ſtraw on his own account, other than for his own conſumption, on pain of 1*s.* for every truſs. ſ. 118

HEALTH.—*Vide Quarantine.*

HEARING MASS.

1 By 23 Eliz. c. 1. every perſon who ſhall ſay or ſing maſs, ſhall forfeit 200 marks, &c. And every perſon who ſhall hear maſs 100 marks, &c. 39 c. 13.

2 By 11 & 12 Will. 3. c. 4. whoever ſhall apprehend a popiſh prieſt, and convict him for ſaying maſs, ſhall receive 100*l.* ſ. 2

3 But by 18 Geo. 3. c. 60. the penalty is repealed, provided the party take the oath there enjoined. ſ. 3

HEDGE STEALING.—*Vide Freehold,*

HEIFER.—*Vide Cattle.*

HEIR.

1 By 1 Jac. 1. c. 4. the heir, if he be no recuſant, or if he be ſuch, and conforms, ſhall be freed from all penalties incurred by his anceſtor's recuſancy, unleſs two parts of the lands were ſeized by the king in the anceſtor's life, and then they ſhall ſo continue till the whole debt be levied; but he ſhall not extend the other third part of the lands 30 ſ. 55

2 The heir has no remedy but conforming to free his fee-ſimple lands, whether ſeized in the anceſtor's life or not. ſ. 56

3 But his lands in fee tail, from ſuch his anceſtors, are not chargeable on a conviction of ſuch anceſtor by proclamation. *Page* 30 ſ. 56
4 On a conviction by judgment, they are chargeable by force, 33 Hen. 8. c. 9. *ibid.*
5 But the above opinions ſeem queſtionable. *ibid.*
6 Perhaps an heir tail is chargeable only with the forfeitures of thoſe months which are contained in the indictment, and not for the months ſubſequent to the conviction. 31
7 The heir apparent may maintain his anceſtor. 538 ſ. 14 & 15
8 The ſon of a queen regnant is included under the words, "eldeſt ſon and heir," in the ſtatute of treaſons; and alſo the ſecond ſon after the death of the firſt; but a collateral heir is not. 53 ſ. 22 (N) 2

HEIRESS.—*Vide Marriage.*

1 The puniſhment of ſtealing an heireſs. 171, 172

HELPING to STOLEN GOODS.—*Vide Stolen Goods.*

HERESY.

1 Hereſy, among proteſtants, is a falſe opinion repugnant to ſome of the eſſential doctrines of revealed religion. 5. c. 2
2 The particular errors called hereſy, are intricate and innumerable. 6
3 The reſtraints upon the high commiſſion court, that no points ſhould be adjudged heretical, but thoſe ſo determined either by ſcripture, ſome of the general councils, or parliament, are good guides to the ſpiritual courts. *ibid.*
4 The convocation may declare what opinions are heretical. 6 ſ. 3
5 But it is queſtionable if they can convene and convict a heretic. *ibid.*
6 Every biſhop, in his dioceſe, may convict and proceed by church cenſures. *Page* 6 ſ. 4
7 But no other ſpiritual judges can *ibid.*
8 For a conviction before the ordinary would not warrant the writ *de heretico comburendo.* *ibid.*
9 By 24 Hen. 8. c. 9. the archbiſhop of either province may cite any perſon before him for hereſy, if the immediate ordinary conſents, or if he neglect his duty in puniſhing the ſame. ſ. 35
10 Proceedings cannot be had, at common law, in the temporal courts, merely for hereſy. ſ. 6
11 If the public peace will probably be diſturbed by the mode of maintaining the errors of hereſy, the offender may be indicted. *ibid.*
12 A temporal judge may incidentally take notice of hereſy. ſ. 7
13 As on a habeas corpus, or an action for falſe impriſonment. *ibid.*
14 Certain aſſertions adjudged not hereſy. *ibid.*
15 In *quare impedit* if the biſhop plead that he refuſed the clerk for hereſy, he muſt ſet forth the particular point. 6, 7
16 A temporal court having conuſance of the original cauſe, may decide whatever is incidental, &c. 7
17 In hereſy, the appeal muſt be to a higher ſpiritual tribunal; the party aggrieved cannot apply for a prohibition. ſ. 9
18 How hereſy was anciently puniſhed. ſ. 10
19 The writ *de heretico comburendo* aboliſhed. *ibid.*
20 It did not incur a forfeiture of either land or goods. *ibid.*
21 All the ſtatutes authoriſing forfeiture or impriſonment for hereſy, are repealed. ſ. 11
22 Yet now a heretic may be taken upon *excommunicato capiendo.* *ibid.*
23 By 9 & 10 W. 3. c. 32. denying any of the perſons in the Trinity to be GOD; maintaining there are more gods than one; denying the truth of *Chriſtianity;*

Chriſtianity; or the divinity of the ſcriptures, renders the offender incapable in law, &c. &c. and liable to three years impriſonment. *P.* 7 ſ. 11

HÆRETICO COMBURENDO.

1 Formerly hereticks were burnt by force of this writ. 7 ſ. 10
2 But by 29 Car. 2. c. 9. this writ is aboliſhed. ſ. 11
3 Witches anciently burnt by force of this writ. 8 ſ. 2

HIDES.—*Vide Slaughter Houſe.*

1 By 26 Geo. 3. c. 71. to diſfigure any hide, &c. at any ſlaughtering houſe, authoriſed by this act, without a certificate, or before notice to the inſpector, is a miſdemeanor. 181 ſ. 13

HIGGLER.

1 Not permitted to travel on a Sunday. 11, 12

HIGH SEAS.—*Vide Piracy.*

HIGH TREASON.—*Vide Treaſon.*

HIGHWAYS.—*Vide Turnpike Roads.*

1 HIGHWAYS are either foot ways, park ways, or court ways, &c. 366
2 A common river is a public highway. ſ. 1
3 A horſe cauſeway is a highway. *ibid.*
4 A thoroughfare is a highway. *ibid.*
5 Every way common to all ſubjects from town to town is a public highway. *ibid.*
6 But a way to a pariſh church or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, is a private way and not a highway. 367
7 The building of a ſtreet is a dedication of the highway to the public; but the ſoil ſtill remains in the owner. *ibid.* (N) 1
8 If a highway through an open field be impaſſable, the people may go by outlets; even over corn ſowed thereon. *Page* 367 ſ. 2
9 The grantee of a way may remove obſtructions therein. *ibid.* (N) 2
10 But he cannot dig trenches to let off water from the way, which the grantor has cauſed; for he has no intereſt in the ſoil. *ibid.*
11 But he may have an action for ſpoiling the way; and perhaps may go on an outlet of the wrongdoer. *ibid.*
12 If a private way be ſpoiled by the grantee, he ſhall repair it, and not the grantor, unleſs the grantor has bound himſelf ſo to do. *ibid.*
13 An ancient highway cannot be changed without an *ad quod damnum* and inquiſition thereof. ſ. 3
14 A way changed without ſuch authority may be ſtopped up. *ibid.*
16 And treſpaſs will lie for going on *ſuch* new way. *ibid*
17 Neither are inhabitants bound to watch, anſwer for robbing in, or to repair *ſuch* new road. *ibid.*
18 But if a *river* change its courſe, the highway continues in the new channel, in the ſame manner as in the old. 368
19 The owner of land through which a road runs is obliged to repair unleſs he incloſes. (N) 3
20 But not a road changed by *ad quod damnum*, except the jury impoſe ſuch obligation upon the perſon who brings it. *ibid.*
21 The ſame conſequences alſo reſult from the power given by ſtatute, to commiſſioners. *ibid.*
22 Generally the occupiers of lands are bound to repair the highways in the pariſh where ſuch lands lie. ſ. 5
23 But the tenants whoſe lands adjoin the road, are bound to ſcour their ditches. *ibid.*
24 Private perſons may be burthened to repair highways either in reſpect to the occupation of lands; or by preſcription. *ibid.*
25 In reſpect to lands; as where the owner incloſes the lands through which the highway lies. ſ. 6

26 And if the adjoining lands belong to ſeveral owners, each are equally obliged to repair. *Page* 368 l. 7
27 But if the owner throws down the incloſure, he is thereby releaſed from the burthen of repair. 369
28 In an *ad quod damnum* the pariſhioners ſhall repair the new road. (N) 4
29 But another pariſh, who gain no benefit from the change of the road ſhall not repair, although it goes through part of ſuch pariſh; but the perſon ſuing out the writ and his heirs ſhall repair ſuch part of the road. *ibid.*
30 A corporation may be bound to repair by force of a general preſcription. l. 8
31 Nor is it any excuſe that they did uſe to repair it *out of charity*. *ibid.*
32 But a private perſon cannot be bound by a general preſcription. *ibid.*
33 A tenant in fee may be bound *ratione tenuræ*. *ibid.*
34 A tenant at will may be indicted for ſuffering a houſe on the highway to grow ruinous. *ibid.*
35 But if the pariſh be indicted, where a particular perſon is bound, either by tenure or preſcription, they cannot diſcharge themſelves under the general iſſue, but muſt plead it ſpecially. *ibid.* l. 9
36 A pariſh in two counties; the indictment may be againſt that part only where the highway lies. (N) 5
37 But an indictment againſt a particular diviſion of a pariſh, muſt ſhew how ſuch diviſion are bound to repair. *ibid.*
38 Of HIGHWAYS BY STATUTE, 13 Geo. 3. c. 78. 370
39 Occupiers of 50*l.* a year keeping a team of three horſes, ſhall ſend the ſame to do ſtatute duty for ſix days in every year. *ibid.*
40 And ſo for another ſix days in every year, for every 50*l.* a year which he ſhall occupy over and above the ſaid 50*l.* *ibid.*
41 So alſo every perſon who ſhall occupy 50*l.* in any other pariſh than that in which he reſides. *ibid.*
42 So alſo every perſon occupying 50*l.* a year, but not keeping a team ſhall ſend a team, &c. *Page* 370
43 Perſons, not keeping a team, but occupying under 50*l.* a year, either where he does or does not reſide, ſhall pay to the ſurveyor within ten days in lieu of the duty, for every 20*s.* a year, he ſhall occupy, one penny for every day's duty, &c. 371
44 Perſons keeping a team and not occupying 30*l.* a year ſhall only ſend one man with their teams.
45 Whoever ſhall keep a cart and horſe, and not a team, ſhall ſend the ſame and one labourer, or pay compoſition as aforeſaid, at the option of the ſurveyor. 372
46 Perſons above eighteen and under ſixty years of age not occupying 4*l.* a year; not being apprentices or menial ſervants, if they have not otherwiſe performed or committed ſhall by themſelves or by deputy perform the ſix days duty. *ibid.*
47 Whoever ſhall keep a coach or other carriage, and not a team, nor occupy 50*l.* a year ſhall pay one ſhilling for every days ſtatute duty, for every horſe drawn in ſuch carriage; or the compoſition as aforeſaid; at the option of the ſurveyor.
*47 If thecarriages required arenot neceſſary; the owners ſhall ſend three men or pay 4*s.* 6*d.* in lieu thereof. *ibid.*
48 The labourers ſhall furniſh *themſelves* with proper inſtruments for the ſtatute labour, and ſhall, with the teams and carriages, work eight hours a day. *ibid.*
49 If perſons do not ſend a ſufficient labourer, beſides the driver, or if they ſhall diſobey the ſurveyor he may diſcharge them and recover the forfeiture from the owner, as if the ſame had not been ſent. 373
50 A ſtand cart and one horſe to be accounted half a team; every cart and two horſes as two thirds of a team. *ibid.*
51 If the duty require it, the ſurveyor may order it to be performed with a waggon. *ibid.*

52 The ſurveyor ſhall give four days notice to the occupiers, &c. when and what ſtatute duty is required. *Page* 373
53 Default in ſending the carriage, team and men forfeit 10*s.* for every cart with one horſe and one man, 3*s.* every cart with one horſe and two men 5*s.* every labourer 1*s.* 6*d.* 374
54 The forfeitures to be applied to the highways. The ſurveyor to be impartial. *ibid.*
55 But the ſtatute duty may be compounded as the juſtices ſhall direct, not exceeding the rates mentioned in the ſtatute. 374
56 But if a neceſſity ſhould ariſe in any particular place, the juſtices may ſuperſede the liberty of compounding and order the ſtatute to be performed in kind; and lots ſhall be drawn which of the inhabitants ſhall ſo perform it. 375
57 The juſtices may mitigate the compoſition, where part of the occupation lies in another pariſh. 376
58 The manner in which the ſurveyors ſhall give notice of the time and place for compounding, and how ſuch compoſitions ſhall be paid. 377
59 Where a draught or plough is kept and no carriage, one ſhilling ſhall be paid for every horſe or pair of oxen. *ibid.* ſ. 14
60 The inhabitants may appoint three months in the year in which no ſtatute duty ſhall be performed. *ibid.*
61 The livings of the clergy are within this ſtatute. ſ. 15
62 Lands ſuffered to *lie freſh*, neither occupied or ſet, are liable to perform the duty. ſ. 17
63 The performance of the ſtatute duty is no anſwer to an indictment for not repairing. ſ. 18
64 The manner in which the funds of *turnpike roads* may be applied to the ſtatute duty of highways. ſ. 19
65 Perſons ſerving in militia are exempted from ſtatute duty. 377 (*a*)
66 ASSESSMENT OF RATES. 379 ſ. 20
67 The ſeſſions may order a rate, not exceeding 6*d.* in the pound, to defray the expences of procuring materials, &c. for the repairs. 379
68 But ſuch an order is bad unleſs it ſhew that the ſtatute duty was not ſufficient; and if it charge the occupiers of lands only; for others are alſo liable. *Page* 379 (N) 9
69 But if the funds are exhauſted, or are inſufficient for the maintenance of the highways, the ſeſſions may cauſe an equal aſſeſſment for that purpoſe, provided the ſaid rate of 6*d.* and this aſſeſſment do not in any one year exceed nine pence in the pound. 380 ſ. 22
70 All forfeitures ſhall be paid into the hands of ſuch perſons as the court inflicting them ſhall direct for the benefit of the highways on penalty, for the miſapplication of double the ſum received. 38
71 If any forfeiture is levied upon a particular inhabitant for the default of, or on account of the pariſh, the ſeſſions may cauſe a rate to be levied within one month by the ſurveyor for reimburſing him. *ibid.*
72 The court alſo will grant a *mandamus* for a rate to reimburſe a particular diſtrict, for a fine paid on the conviction of another diſtrict in the ſame pariſh, both bound to repair; but ſuch *mandamus* muſt be ſpecial. (N) 10 *ibid.*
73 Feoffees or truſtees of lands granted for the repair of highways ſhall let them to the beſt advantage; and the ſeſſions may enquire into the management thereof. 382
74 No ſhelter for robbers to conceal themſelves to remain near the highways. ſ. 26
75 Every public cartway ſhall be twenty feet wide; and every horſe way eight wide. ſ. 27
76 Two juſtices, upon view, may order highways to be widened or diverted; ſo as not to exceed thirty feet in breadth; and ſo as not to pull down any building, or incroach on any garden, court or yard. 383
77 The ſurveyor ſhall make ſatisfaction to the owners for the ground which ſhall be neceſſary for the widening or diverting ſuch highway *ibid.*
78 If

78 If they refuſe to treat, or cannot be found, or will not accept the ſatisfaction offered by the ſurveyor: the ſeſſion upon certificate ſhall impannel a jury who ſhall aſſeſs the value, not exceeding forty years purchaſe; and upon tender thereof, or leaving the ſame with the clerk of the peace, the ground ſhall be for ever diveſted and become a public highway. *Page* 384

79 But all ſubterraneous property of value which can be acquired without injuring the ſurface of the highway is ſaved to the owners of the land. *ibid.*

80 And all timber and wood thereon ſhall be felled within a month and laid upon the adjoining land for the benefit of the owner. *ibid.*

81 And where the funds in the hands of the ſurveyor are not ſufficient for theſe purpoſes the ſeſſions may order a rate not exceeding 6d. in the pound yearly accordingly. *ibid.*

82 The old highway to be ſold, in which a preference is to be given to the occupiers of the adjoining lands. 385

83 And if it lead to any land, houſe, or place, the ſale ſhall be ſubject to ſuch right of paſſage. *ibid.*

84 And upon tender or payment of the money (as deſcribed) the land ſhall veſt in the purchaſer, ſaving the right of all ſubterranean property to thoſe who would otherwiſe have been intitled. *ibid.* ſ. 29

85 If the jury ſhall aſſeſs a greater ſum than what the ſurveyor offered, the coſts ſhall be paid from the ſurveyor's fund; if a leſs ſum, they ſhall be paid by the owners of the land. ſ. 30

86 Two juſtices may divert any highway, not in the ſituation before deſcribed, if the owners of the land through which the new road is to paſs will conſent, and may purchaſe, ſtop up, and ſell, as in roads to be widened or diverted. 386 ſ. 31.

87 Perſons aggrieved by any ſuch proceeding, or by any *ad quod damnum* for this purpoſe, may appeal to the next ſeſſions, &c. 387

88 No old way ſhall be ſtopped up before the new way is completed *P.* 387

89 New highways which have been peaceably acquieſced in for 12 months ſhall become incontrovertible. *ibid.*

90 No common land lying between the fences of any old highway ſhall be incloſed. 388

91 Land, between the fences not being common, exceeding 30 and not extending to 50 feet in breadth, ſhall not be ſtopped till ſatisfaction is made to the owners for all the land exceeding 30 feet. 388 ſ. 32

92 And if the old road ſhall have paſſed through common land, or if the ſpace between the fences, the land not being common, ſhall exceed 50 feet in breadth, the reſpective owners of ſuch land ſhall hold and enjoy the old highway, making ſatisfaction for the ſame. *ibid.*

93 Where a footway is diverted through a different part of the ſame lands, no ſatisfaction ſhall be made except the new road ſhall be longer, or that part of the land of greater value. ſ. 33

94 If the footway ſhall not go through the ſame perſon's lands, ſatisfaction ſhall be made to the owner of the new land by the award of two perſons and an umpire. *ibid.*

95 Two juſtices upon view may ſtop up and ſell, or may divert all highways which are uſeleſs and burthenſome to the pariſh. 389 ſ. 34

96 OF THE SURVEYOR. 389 c. 35

97 The officers and pariſhioners ſhall aſſemble yearly on the 22d. September at 11 o'clock in the forenoon. *ib.*

98 But the preſence of the officers is not eſſential to the legality of the meeting. (N) 5

99 The majority ſhall make a liſt of ten pariſhioners each poſſeſſing a real eſtate of 10*l.* a year or who rent 30*l.* a year, or worth 100*l.* perſonally. *ib.*

100 If a ſufficient number of qualified pariſhioners cannot be found, the deficiency ſhall be ſupplied by the moſt able inhabitants. 390

101 Within three days after, the conſtable ſhall tranſmit a copy of the liſt to the juſtice of the diviſion, and ſhall

ſhall ſend the original liſt to the ſpecial ſeſſions, after Michaelmas ſeſſion and give perſonal notice to the ten perſons named to appear at ſuch ſpecial ſeſſion to accept (if appointed) of the office of ſurveyor, to *ſhew cauſe to the contrary.* *Page* 390

102 The juſtices at ſuch ſpecial ſeſſions ſhall appoint one, two or more ſurveyors from the ſaid liſt, preferring ſuch as are qualified, which ſhall be notified to the perſons choſen who ſhall be ſurveyors for the enſuing year. 391

103 But if the liſt has been riotouſly procured, the juſtices may reject it. (N) 15

104 If any named in the liſt refuſe to ſerve, they ſhall forfeit 5*l.* *ibid.*

105 And upon default the juſtices may appoint inhabitants of the county living within three miles of the pariſh, and if they refuſe, they ſhall forfeit 50*l.* *ibid.*

106 A ſurveyor who has ſerved one year ſhall not be appointed for three years afterwards. *ibid.*

107 If no liſt is returned, or if default ſhall be made by ſuch as they appoint, two juſtices at ſpecial ſeſſion may in their diſcretions appoint a ſurveyor, with a ſalary to be paid from the forfeiture, but not to exceed one-eighth of the 6*d.* rate. *ibid.*

108 The juſtices may order the collector to return an account of the ſaid aſſeſſment. 392

109 Officers neglecting they duty in the premiſes ſhall forfeit 40*s.* *ibid.*

110 Where a ſurveyor with a ſalary is appointed, the juſtices ſhall alſo appoint an aſſiſtant, who ſhall forfeit 40*s.* if he refuſes to ſerve; and another ſhall be appointed liable to 50*s.* for refuſing; and they may then appoint one with a ſalary. *ibid.*

111 An aſſiſtant who has ſerved one year ſhall not be again appointed for three years without he conſents thereto. 392

112 The ſurveyor ſhall give bond if required. *ibid.*

113 Two parts in three of the pariſhioners aſſembled as aforeſaid may recommend a ſurveyor with a ſalary to the juſtices. *Page* 392

114 If the ſurveyor dies or becomes incapable during the interval of the ſeſſions, two juſtices may appoint a perſon to officiate until the ſeſſion. *ib.*

115 More ſurveyors than one to be comprehended under the word ſurveyor. 394

116 The ſalaries of ſurveyors in cities, &c. muſt be approved by two thirds of the pariſhioners. *ibid.*

117 DUTY OF SURVEYOR. 394. ſ. 37

118 The aſſiſtant ſhall obey the ſurveyor; and account to him for the monies he receives on pain of double the value, and for any neglect he ſhall forfeit not more than 5*l.* nor leſs than 40*s.* *ibid.*

119 The ſurveyor ſhall draw upon the aſſiſtant for all ſums amounting to 40*s.* but he ſhall not be anſwerable unleſs his drafts are paid. *ibid.*

120 Surveyors ſhall view the highways and gave notice to remove obſtructions; and if not done within 20 days, the ſurveyor may do it at the coſt of the party who ſhall forfeit one penny for every foot. 396

121 The ſurveyor ſhall, upon oath, inform two juſtices of highways, bridges, cauſeways, &c. out of repair, which any particular perſons are bound to repair. *ibid.*

122 And if they are not repaired, upon notice to the owners, they ſhall be preſented at the ſeſſions. *ibid.*

123 Juſtices may order which of the highways ſhall be firſt repaired. *ibid.*

124 How, where, and in what manner the ſurveyor ſhall erect direction poſts, &c. 397

125 Where and in what manner the ſurveyor may get materials for the repairs. *ibid.* ſ. 40

126 How materials ſhall be obtained where there are not ſufficient within the pariſh. 398 ſ. 41

127 The ſurveyor ſhall fence off all pits and holes made in digging materials. 399 ſ. 42

128 How materials dug for the uſe of a different pariſh than that in which they lie ſhall be removed. 400

129 The penalty for damaging mills, &c. *Page* 400 ſ. 43
130 In what manner the ſurveyor ſhall keep his accounts. 401 ſ. 44
131 The ſurveyor may contract for materials. 402 ſ. 45
132 Surveyors neglecting their duty ſhall forfeit between 10 and 5*l.* 402 ſ. 46
133 Juſtices of cities, &c. may execute this act. *ibid.*
134 If the ſurveyor receives money due to the turnpike roads, he ſhall pay it to the treaſurer. ſ. 47
135 Of NUISANCES *to highways.* 405
136 The adjoining lands are bound to ſcour the ditches and to lop the trees. ſ. 52
137 The ſurveyor ſhall give ten days notice to the landholders next adjoining the road to cut and prune their hedges, and upon default the juſtices may order the ſame to be done and if ſuch order is not complied within ten days, the ſurveyor ſhall cut and prune at the expence of the owner of the land who ſhall pay over and above 2*s.* for every 24 feet of hedge and 2*s.* for every tree. 406
138 The landholder ſhall make proper ditches, drains, and keep them properly ſcoured and in repair on pain of 10*s.* ſ. 55
139 And where the old ditches, &c. are not ſufficient the ſurveyor ſhall order new ones to be made. 407
135 No ſmall tree or buſh, whereby a man may lurk, ſhall ſtand, within 200 feet of either ſide of a highway. 407 ſ. 58
136 No tree, buſh, or ſhrub, ſhall grow within 15 feet from the center of any highway, unleſs for ornament, &c. ſ. 59
137 The ſeaſon in which hedges ſhall be pruned, and trees felled ſ. 60
138 Whoever ſhall lay any thing in a highway, for five days, ſo as to obſtruct or injure the ſame, ſhall forfeit 10*s.* 408 ſ. 62
139 And if not removed within five days after notice, by the ſurveyor, it ſhall be ſold. ſ. 62
140 Obſtructions by carriages, unleſs for a reaſonable time to unload forfeit 10*s.* *Page* 40
141 Penalty for incroaching upon highways. ſ. 6
142 No alehouſes ſuffered on bridges *ibid.*
143 Penalty for damaging banks cauſeways, &c. &c. 6
144 HORSES AND CARRIAGES ON HIGHWAYS. 410 ſ. 6
145 Juſtices, at ſeſſions, may licenſe an additional member, and ſtop proceedings for the forfeiture. 41
146 The owner's name, &c. to be painted on all carriages. 41
147 The penalty for the negligent or impertinent behaviour of drivers *ibid.* ſ. 6
148 The forms to be obſerved in proceedings. 413 ſ. 6
149 Abſtracts of 13 Geo. 3. c. 78. to be given to the ſurveyor. ſ. 68
150 Forfeitures, &c. to be levied by diſtreſs, &c. ſ. 6
151 How convictions ſhall be made ſ. 7
152 OF PRESENTING HIGHWAYS 414 ſ. 7
153 Juſtices of aſſize upon view; and juſtices of peace upon view, or information, on oath, by the ſurveyor, may preſent at the aſſizes, great ſeſſions of Wales, or quarter ſeſſions, any highway, cauſeway, or bridge, out of repair, within the juriſdiction and county where they lie. (*Vide* No. 176.) 415 & 418 ſ. 78 & 7
154 No ſuch preſentment, nor any indictment ſhall be removed by *certiorari*, until traverſe and judgment. *ib*
155 But on the part of the *proſecution* it may be removed before traverſe and judgment; for the reſtriction was to prevent delay by *defendants*. *ibid.* (N) 2
156 But if the right to repair is in queſtion, the defendant may remove the proceedings. 41
157 And every *ſuch preſentment* ſhall have equal force as if it had been found by a jury. *ibid.*
158 Saving the right of traverſe, as to the fact of non-repair, as well as to the right of repairing. *ibid.*

159 The justices are compellable by *mandamus* to receive 2 general traverse. *Page* 415 (N) 23
160 The justices may order the prosecution to be at the expence of the limit, and on conviction may fine the offender. *ibid.*
161 The right to traverse confirmed. s. 72
162 ASSESSMENTS may be levied by distress, and the surveyor to be a competent witness. s. 73
163 How the prosecutor may proceed for a forfeiture *above forty shillings*. s. 74
164 Ten days notice before action commenced and none to be brought after a month has expired. 417 s. 75
165 No distress unlawful, or the party a trespasser for want of form. s. 76
166 The court may award costs to either party according to the circumstances. s. 77
167 A defendant indicted for not repairing *ratione tenuræ*, shall, on submission, pay costs. *ibid.* (N) 24
168 The parishioners may agree to bear the charges of any prosecution or defence, s. 77
169 But public notice shall be given of every meeting of the parish. *ibid.*
170 Forfeiture for opposing the execution of the act. 418
171 If the quarter sessions exceed their authority; as to order a surveyor to make out his accounts before a special sessions, such proceedings may be removed by *certiorari*, and quashed; for their power, in such case, is not original but appellate. s. 80
172 Justices are empowered to administer oaths, in respect to highways. 419
173 On giving fit notice they may hold a special sessions. *ibid.*
174 OF DEFENDANTS, &c. *ibid.* s. 82
175 Persons aggrieved may appeal to the quarter sessions, giving notice thereof, within six days after the cause arose, and entering into a recognizance with one surety, within four days after the notice. *ibid.*
176 On notice of such appeal, all proceedings to be returned to the sessions, on pain of 5*l*. *ibid.*
177 The sessions shall hear the appeal in a summary way, and decide *finally*; and award costs as the decision shall be. *Page* 419
178 Limitation of actions, &c. 420
179 No one shall be convicted without being summoned. s. 83
180 An indictment for not repairing an highway ought to shew the place from which and to which it leads. s. 86
181 But an objection for want of this has been disallowed. Note marg.
182 If for a nuisance it must expressly shew the place where it was done. s. 87
183 So for want of repair the highway must be shewn to lie in the parish bound to repair. *ibid.*
184 How an indictment for not repairing *ratione tenuræ*, must alledge the offence. 422 s. 90
185 The defendants ought not to plead *quod non debent reparare* without shewing who ought. 423 s. 93
186 Defendant shall not be discharged on paying the fine, but a *distringas* shall go till they repair. s. 94

HIGHWAYMEN.——*Vide Robbery. Attempt to rob.*

HOGS.—*Vide Nuisance.*

HOLIDAY.—*Vide Church.*

HOLLIES.—*Vide Trees. Freehold.*

HOMICIDE.—*Vide Felo de se. Murder. Manslaughter.*

1 Homicide is an offence either against a man's own life or that of another. 102 c. 27
2 Homicide against the life of another, is either justifiable, excusable, or felonious. 104 c. 28
3 Justifiable homicide causes no forfeiture at all. *ibid.*
4 Excusable homicide causes forfeiture of *goods*. *ibid.*
5 Felonious homicide is murder or manslaughter. *ibid.*

6 JUSTIFIABLE HOMICIDE muſt be owing to ſome unavoidable neceſſity, and the party killing muſt be free from all manner of fault. *Page* 105
7 There muſt be no malice covered under the pretence of neceſſity. *ib.* ſ. 2
8 *If a ſpecial juſtification* can be pleaded in homicide; and the plea is found for the defendant, he ſhall be diſmiſſed and neither put to plead not guilty, or to purchaſe his pardon. *ibid.* ſ. 3
9 Juſtifiable homicide is either in the due execution or advancement of public juſtice, or in the juſt defence of a man's perſon, houſe, or goods. *ibid.*
10 The judgment by which a perſon is executed muſt be given by one who has juriſdiction, or it will not juſtify either the judge or the officer. ſ. 4
11 If common pleas give judgment of death, or juſtices of peace award execution in treaſon, and it is done, both judges and officers are guilty of felony. ſ. 5
12 But if juſtices of peace, on indictment of treſpaſs, arraign for felony, and the priſoner is executed, the juſtices only, and not the officers are guilty. 106 ſ. 6
13 The judgment muſt be executed by the lawful officer. 106 ſ. 7
14 If the judge who ſentences, or any private perſon, or even the officer without lawful warrant, executes *an attainted perſon*, they are, (contrary to former opinions) guilty of felony. ſ. 8, 9
15 The execution muſt be purſuant of and warranted by the judgment. ſ. 10
16 But the king's warrant may remit the ignominious part of the puniſhment and the officer is juſtified in doing execution accordingly. (N) 1
17 Any perſon may juſtify killing another who has been guilty of felony and cannot otherwiſe be taken. ſ. 11
18 So an officer may juſtify the killing an innocent perſon, indicted of felony, if he cannot otherwiſe be taken. ſ. 12
19 If a criminal, endeavouring to break gaol, aſſault his gaoler, he may be lawfully killed by him. 107 ſ. 13
20 Rioters, &c. reſiſting the endeavour of a juſtice to arreſt them, the killing them may be juſtified. *Page* 107 ſ. 14
21 So alſo may a private perſon, in defence of himſelf againſt them. *ibid.*
22 And ſo perhaps if he cannot otherwiſe ſuppreſs them. *ibid.*
23 A ſtranger, aſſaulted by combatants whom he endeavoured to part, who kills one of them may juſtify it if they knew his interpoſition was for that purpoſe. (N)
24 Treſpaſſers in deer parks, &c. not ſurrendering to the keeper, may be *juſtly* ſlain by him by force of the ſtatute 21 Edw. 1. c. 2, 3, & 4 W. & M. c. 10. ſ. 15
25 In trial by battle, if one combatant kill the other he is juſtified. ſ. 16
26 But in all theſe caſes the killing is not juſtifiable unleſs it was unavoidable. (N)
27 If a ſheriff, endeavouring to retake upon an eſcape in civil proceſs and kills the perſon *in the affray* it is juſtifiable. ſ. 17
28 The officer in ſuch a caſe is not bound to give back. ſ. 18
29 But no private perſon can juſtify homicide in arreſting a man on civil proceſs, as he may in felony. ſ. 19
30 Nor can the ſheriff lawfully kill thoſe who baſely fly. 108 ſ. 20
31 Killing a wrong-doer in defence of a man's perſon, houſe, or goods may be juſtified. ſ. 21
32 As where a man kills one on the highway who aſſaults to rob or murder him. *ibid.*
33 Or if the owner or any of his inmates kills one who attempts *a felony* on it. *ibid.*
34 A woman may juſtify killing the man who attempts to raviſh her. *ib.*
35 A ſervant, who finding his maſter ſlain, and apprehends the like even to himſelf, may juſtify killing the murderer. *ibid.*
36 A parent or a huſband may juſtify killing the *forcible* raviſher of a wife or daughter's virtue. *ibid.* (N)
37 But the perſon juſtifying muſt be wholly free from fault. ſ. 22
38 A man

38 A man cannot juſtify killing another in defence of his houſe or goods, or even of his perſon, from a *bare private treſpaſs*. *Page* 108 ſ. 23
39 The queſtion argued whether it is not juſtifiable to kill when the treſpaſs is violent and indicates an intention to murder. 109 ſ. 24
40 A diſtinction taken between an aſſault on the highway and in a town. ſ. 25
41 By 24 Hen. 8. c. 5. thoſe who are indicted for *the death* of perſons attempting to murder, rob or burglariouſly to break into manſion houſes ſhall incur no forfeiture and be diſcharged. 110
42 Not only the maſter of a houſe but a lodger or ſojourner who kills an aſſailant is within the protection of the ſtatute. *ibid.* (N)
43 This reaches not any crime unaccompanied with force, nor to the breaking open any houſe in the day time unleſs it imports an intention to commit robbery or arſon. *ibid.*
44 A man is not juſtified in killing another whom he taketh in adultery with his wife. *ibid.*
45 In what caſe the killing *an innocent perſon* for the preſervation of a man's own life is ſaid to be juſtifiable. ſ. 26, 27
46 Excuſable homicide is either *per infortunium* or *ſe defendendo*—*Sed vide ante* EXCUSABLE HOMICIDE.

HONEY AND WAX.

1 By 23 Eliz. c. 8. to mingle any roſin, tallow, turpentine or other deceitful thing in the melting of wax incurs a penalty of 2*s.* a lb. 522 ſ. 122
2 If any melter ſhall neglect to ſtamp his name on the outſide of every piece of melted wax he ſhall forfeit every piece ſo unſtamped. 523. ſ. 123
3 Every ſeller alſo who ſhall ſtamp his name thereon that it may be known who were the workers thereof. ſ. 124
4 Every package of honey ſhall be marked with the name of the ſeller on pain of 6*s.* 8*d.* a package. *Page* ſ. 125
5 Whoever ſhall fill honey leſs than 32 wine gallons the barrel—16 the kilderkin—8 the firkin, ſhall forfeit 5*s.* for every half gallon deficient. ſ. 126
6 But theſe penalties ſhall not extend to perſons ſelling wax, &c. from their own bees, nor to ſervants, &c. ſ. 127
7 Whoever ſhall counterfeit the marks aforeſaid ſhall forfeit 5*l.* ſ. 128

HOPS.

1 Hops were not within the ſtatutes againſt foreſtalling. 488

HOP BINDS.

1 By 6 Geo. 2. c. 37. maliciouſly to cut any hop binds growing on poles in any plantation of hops is felony without clergy. 238 ſ. 2

HORSE BREAD.

1 How hoſtlers and inkeepers ſhall be puniſhed for making or ſelling horſe bread of an inſufficient weight or quality. 454

HORSE CAUSEWAYS.—*Vide Highways.*

HORSE COURSER.

1 No horſe courſer ſhall travel, or come to his inn on the lord's day on pain of 20*s.* 11, 12

HORSES.—*Vide Purveyors. Highways.*

1 The taking of horſes, &c. may be felony. 144 ſ. 28
2 If in a field and the felonious taker be apprehended before he gets out, it is a ſufficient aſportation. 141

HORNBEAM.—*Vide Trees.*

HOSTLER.—*Vide Innholder.*

HOSTILITY.—*Vide Treason. Piracy.*

HOUSEHOLDER.

1 All householders dwelling in any county or town whether they occupy lands or not are within the statute of bridges. *Page* 449

HOUSE.

1 In what cases larceny from the house is debarred of clergy. 151 c. 36
2 To break and enter feloniously the mansion house of another in the night is burglary. 159
3 What is such a house in which burglary may be committed. 162, 165
4 The anxiety with which the law protects a dwelling house. 165 (N)
5 The species of house in which arson may be committed. 166
6 What part of the house must be burnt to complete the crime. *ibid.*
7 The punishment of servants in negligently setting fire to a house. 127
8 How far it is lawful for a man to assemble his friends in the defence of his house. 267 f. 8. 297 f. 10
9 How far a constable may enter a house to suppress an affray therein. 269 f. 16
10 It is felony riotously to pull down, or begin to pull down a house. 308, 309
11 In what cases a man may justify homicide in defence of his house. 109, 110

HUNGER.

1 Hunger is no excuse for theft. 141
2 A tenderness to be exercised upon this occasion. *ibid.* (N) 6

HUSBAND.—*Vide Feme Covert.*

1 A wife may demand surety of the peace against her husband threatening to beat her outrageously. 253 f. 4
1 A husband may have it also against his wife. *Page* 253 f. 4
3 Cases in which it has been granted to peers and peeresses. 255 (N) 4
4 A husband and wife considered as one person in law, 141 f. 19
5 The husband of an heiress apparent may lawfully maintain the ancestor in an action concerning the inheritance of the land whereof he is seized in fee. 538 f. 15
6 The husband alone may bring a *decies tantum* for embracery in an action by husband and wife. 552 f. 19
7 What property a husband is seized of in right of his wife, he shall forfeit as *felo de se*. 103 f. 7
8 A husband may justify the killing the *forcible* ravisher of his wife's virtue. 108 (N)
9 But not if he take them in *bare* adultery. 110 (N) 1
10 If a wife procure a servant to kill her husband they are both guilty of petty treason, 133
11 If a stranger procure a wife to kill her husband he may be indicted as accessary to the treason. *ibid.*
12 A wife cannot be found guilty with her husband in the statute 3 & 4 W. & M. c. 9. against robbing lodgings. 137 (N) 3
13 If the lodgings were let to the husband she cannot be found guilty at all. *ibid.*
14 And if let jointly, the taking shall be construed to be by the husband. *ibid.*
15 A husband is not liable to pay the forfeiture on an indictment against the wife for absence from church. 27 f. 39

HUNTERS.

1 Riotously assembled with painted visors, &c. may be obliged to surrender upon pain of felony. 186 c. 49
2 By 9 Geo. 1. c. 22. to appear disguised, or to kill fallow deer—to rob a warren—a coney burrow, or to steal fish from a pond *being armed and disguised*, &c. &c. Or to kill deer in any inclosed place, or to rescue another

ther in custody for these offences is felony without clergy. *Page* 187
3 Offenders may be forced to surrender or be adjudged guilty of felony. *ibid.* s. 3
4 Those who prevent such surrender equally guilty. 188
5 By 5 Geo. 1. c. 28. whoever shall enter any park where deer are kept, without licence, shall be transported. 189 s. 6
6 By 16 Geo. 3. c. 30. to kill, destroy, or snare any fallow deer forfeits 30*l.* if by a keeper double; and the second offence is transportation. *ibid.* s. 7
7 Justices may search the houses of suspected offenders, 190
8 The punishment of laying snares for deer, *ibid.* s. 9
9 To enter an inclosed park armed, &c. transportation. 191
10 Dogs and engines may be seized by keepers. *ibid.* s. 10

HUSTINGS.

1 In what case the court of hustings may be appealed to from the sheriffs court. 16 (N) 2

I. J.

JACTITATION.

1 A Sentence of *jactitation* in the ecclesiastical court, is not conclusive evidence against a former marriage, on an indictment for polygamy, on the 21 Jac. 1. c. 11. 175(N)
2 And, admitting it to be conclusive, yet the validity of it may be impeached, by evidence that it was obtained by fraud and collusion. *ibid.*

IDENTITY.

1 When the fact of identity is a collateral issue, it may be pleaded and replied to *ore tenus*; and may be tried by the principal jury, or on a *venire*, returnable *instanter*. *Page* 3 (N) 5

IDEOT.

1 An ideot is one whose understanding is defective from his birth, 2 (N) 2
2 A person born deaf and dumb is, *prima facie*, an ideot. *ibid.*
3 Ideots are not punishable by any *criminal* prosecution whatsoever. 1, 2
4 If an ideot commit a trespass against the person or possession of another, he may be compelled to make satisfaction in damages. 3 s. 5

JESUIT.—*Vide Papists.*

1 By 27 Eliz. c. 2. whoever shall receive, relieve, or comfort, &c. any jesuit, &c. shall be deemed a felon without clergy. 76 s. 21

JEWS.

1 It hath been questioned whether Jews, &c. have a right to demand surety of the peace, 53 s. 3

IGNOMINY.

1 The king may remit the ignominious part of a judgment.

IGNORAMUS.—*Vide Grand Jury.* No. 2.

IMAGINING.—*Vide Treason.*

IMBEZZLEMENT.—*Vide Embezzlement. Larceny. Naval Stores.*

IMPLICATION.—*Vide Felony Statute.*

IMPLIED MALICE.—*Vide Murder. Manslaughter.*

1 Is when homicide happens in the execution of an unlawful action, principally intended for some other purpose,

poſe, and not to do a perſonal injury to him in particular who is ſlain. *Page* 122

IMPORTATION.

1 Aliens may import their fiſh or other victual, without moleſtation. 480 ſ. 7
2 Merchandize imported, may be ſold in groſs. 479 ſ. 3
3 Such importations not within the ſtatute of ingroſſing, &c. *ibid.*
4 The crown may ſtop the importation of cattle, to prevent the introduction of diſeaſe. 180

IMPOSTORS.

1 Impoſtors in religion, as falſely pretending to extraordinary commiſſions from God, and terrifying the people with falſe denunciations, are puniſhable by the *temporal judges* with fine and impriſonment, &c. 10

IMPRISONMENT.—*Vide Gaoler.*

INCAPACITY.—*Vide Officers. Diſcretion. Infants. Ideots, &c.*

INCENDIARIES.—*Vide Arſon. Burning.*

INCHANTMENT.—*Vide Witchcraft.*

INCLOSURE.—*Vide Black Act. Deer-Hunters. Fiſh.*

INCORRIGIBLE ROGUES.—*Vide Vagrants.*

INDICTMENT.—*Vide Contra pacem. Vi et armis*

1 In an indictment for forcible entry, *tali die intravit, &c. et ipſum* A. B. *manu forti diſſeiſivit*, are ſufficient without adding *ad tunc et ibidem.* *Page* 286 ſ. 42
2 But in murder it is a fatal miſtake not expreſsly to ſhew the day and place of the ſtroke, as well as of the aſſault. 287
3 In an information or indictment on a penal ſtatute, the words of the ſtatute muſt be preciſely purſued. 484 ſ. 20, 22. *p.* 342 ſ. 26
4 In what manner the words of the ſtatute of treaſons have been purſued in indictments. 51 ſ. 8
5 How an indictment againſt a popiſh prieſt muſt be framed. 68 ſ. 82
6 In an indictment for not taking the oath, any miſrecital of the very words of the oath is erroneous. 83 ſ. 36
7 In an indictment on 8 Eliz. c. 4. the priſoner ſhall have his clergy unleſs laid *clam et ſecretè.* 151
8 An indictment for forcible marriage ought to alledge that it was *for lucre.* 172 ſ. 4
9 An indictment on a ſtatute need not ſhew that the defendant is within the benefit of an exception. 20, 21 484
10 An indictment is not vitiated by falſe Latin unleſs it be unintelligible or nonſenſical. 342, 104
11 How forgery on the ſtatute may be ſet forth. 343
12 What is neceſſary in an indictment for nuiſance. 361, 422
13 It is juſtifiable to kill an innocent perſon, *indicted*, if he fly from proceſs. 106 ſ. 12
14 A perſon may be indicted in one county for goods ſtolen in another. 136, 137
15 In what county forcible marriage may be indicted. 171, 172
16 Every indictment of larceny muſt have the word *cepit* as well as *aſportavit.* 134

IDLE and DISORDERLY.—*Vide Vagrants.*

INDORSEMENT.—*Vide Forgery.*

INFAMY.—*Vide Libel.*

INFANT.

1 Infants ought to find ſecurity for the peace, by their friends, and not be bound themſelves. *Page* 254
2 Under the age of diſcretion not to be puniſhed criminally. 1
3 How to be dealt with if they can diſtinguiſh between good and evil. 3 ſ. 8
4 Are liable to make a civil ſatisfaction for treſpaſs. *ibid.*
5 May be guilty of a forcible entry in reſpect of actual perſonal violence. 283 ſ. 35

INFECTION.—*Vide Murder. Quarantine.*

INFERIOR COURT.—*Vide Hereſy.*

INFIDELS.

1 It has been queſtioned whether infidels, &c. have a right to demand ſurety of the peace or not. 253 ſ. 3

INFORMATION.—*Vide Indictment.*

INGOTS.—*Vide Bullion.*

1 Forfeiture for making *ingots* in imitation of *Spaniſh bras.* 72 ſ. 7

INGROSSING.—*Vide Foreſtalling.*

INHABITANT.

1 How inhabitants are to be taxed to the repair of bridges. c. 77. ſ. 16

INMATES.—*Vide Burglary.*

INN and INNHOLDER.

1 An innkeeper may be indicted as common law for *the nuiſance* of harbouring thieves, or ſuffering diſorders, or taking exorbitant prices, or if he open a new inn unneceſſarily, &c. *Page* 451 c. 78
2 If he refuſe to entertain a traveller, &c. he is liable to an action by the party grieved. 452
3 The conſtable may compel the reception of a gueſt. *ibid.*
4 How he may enlarge or build a new inn, upon the *ſcite* of an old one. ſ. 3
5 They muſt ſell their victuals and provender at reaſonable rates. 480
6 In what manner they may make horſe bread. 453 ſ. 8

INN of COURT.

1 Burglary may be committed in a chamber in an inn of court——the reaſon of it. 163

INQUEST of OFFICE.—*Vide Coroner. Forfeiture.*

1 In what manner lunacy may be tried by an inqueſt of office. 3 ſ. 4

INQUISITION.—*Vide Madman. Lunacy.*

INSOLVENTS.—*Vide Bankrupts.*

1 By 28 Geo. 2. c. 13. inſolvent priſoners guilty of perjury, in delivering a ſchedule of their effects in the manner the act deſcribes, ſhall ſuffer death without clergy. 204 ſ. 4

INSURANCE.—*Vide Ships. Mariners.*

INTAIL.—*Vide Recuſancy.*

INTENTION.

1 There can be no felony without an evil intention. *Page* 99
2 Originally the bare intention to commit a felony, was felonious. *ib.*
3 In burglary there muſt be an intention to commit felony. 164 ſ. 18
4 How far the intention with which perſons aſſemble, will be unlawful, in order to conſtitute *a riot*. 294 ſ. 3

Vide Smugglers

INTICING.—*Vide Enliſting.*

INTRUSION.—*Vide Forcibly Entry.*

INSTRUMENT.

1 High treaſon to make, or to have a coining inſtrument in cuſtody. 64

INVOCATION.

1 Formerly the invocation of an evil ſpirit was felony. 8

IPSO FACTO.—*Vide Church. Excommunication.*

IRELAND.

1 Ireland is not a foreign nation as to the bringing counterfeit money from it. 65 ſ. 67
2 How far a popiſh prieſt going to Ireland, but driven again on the Engliſh coaſt by a ſtorm, is guilty of high treaſon. 68, 69
3 Forgery of a leaſe of lands in Ireland, is not within 5 Eliz. c. 14. 341 ſ. 20

IRON.—*Vide Freehold. Stolen Goods.*

IRONY.

1 How to be underſtood in a libel. 353

IRREVERENCE.

1 A churchwarden is juſtified in *laying hands* on any perſon guilty of irreverent behaviour during divine ſervice. *Page* 272

ISSUE.—*Vide Pleading. General Iſſue.*

JUDGE.

1 Bribery in a judge formerly puniſhed as high treaſon. 314 ſ. 6
2 It is now a very high miſdemeanor. *ibid.*
3 The Earl of Middleſex fined for bribery. ſ. 7
4 Judges of all courts of record are freed from all proſecutions whatſoever, *as judges*, except in parliament. 350 ſ. 6
5 Judges are not within 8 Hen. 6. c. 12. againſt altering records. 177 ſ. 4

JUDGMENT.

1 How far it is *præmunire* to impeach a judgment given at common law. 79, 80
2 Whether the *villainous* judgment ſhall be inflicted for conſpiracy. 351
3 No inſtance of it ſince the reign of Edw. 3. 352

JURISDICTION.

1 How far it is felony in the officer to execute a convict where the judge has no juriſdiction. 105, 106
2 It is no juſtification of confederacy to carry on a malicious proſecution, that the court had no juriſdiction of the cauſe. 348, 349
3 No want of juriſdiction in a court to which ſcandalous matter is introduced, will make it libellous. 354, 355
4 The quarter ſeſſions have juriſdiction in conſpiracy. 352 (N)

JURORS.—*Vide Preſentment.*

1 Whoever ſhall ſtrike a juror, &c. in court, ſhall loſe his hand, his goods, the profit of his lands, and ſuffer perpetual impriſonment. *Page* 881 ſ. 3
2 A juror who gives a verdict contrary to manifeſt evidence, is not thereby guilty of perjury. 322 ſ. 5
3 Jurors not liable to any proſecution whatſoever, in reſpect to their verdict, *in a criminal matter.* 349 ſ. 5
4 They were formerly queſtioned in the *Star Chamber.* *ibid.*
5 But *attaint* lies againſt jurors for a falſe verdict in a *civil cauſe.* *ibid.*
6 In queſtions of repairing bridges no inhabitant ought to be a juror. 444 ſ. 6
7 It is *maintenance* for a juror to *ſolicit* a judge for judgment, after he has given his verdict. 536 ſ. 8
8 A juror may exhort his companions to give ſuch a verdict as he thinks right. 537

JUSTICES of OYER

Have no juriſdiction of forcible entry. 292 ſ. 61
How far they have juriſdiction in the offence of abſenting from church. 23, 24

JUSTICES of PEACE.

The power of juſtices of the peace to bind perſons to their good behaviour, is indefinite and diſcretionary. 262

JUSTIFICATION.

A truth is no juſtification of a libel. 353, 354
The reaſon of it. *ibid.* (N)

JUSTIFIABLE *Homicide.*

K.

KALENDAR.—*Vide Computation.*

KILLING.—*Vide Murder.*

KING.—*Vide Treaſon. Contempt.*

1 EVERY offence tending to the prejudice of the king, is indictable. *Page* 361 ſ. 4
2 A prerogative given to one king goes to his ſucceſſors. 83 ſ. 28
3 The reaſon is, that the king never dies. 273 ſ. 31
4 A miſtake to his prejudice may be aſſigned for, even where nothing elſe can 25 ſ. 29
5 The king's title to land muſt always appear upon record. 28 ſ. 45

KING's BENCH.—*Vide Diſcretion Forcible Entry. Church. Certificate. Riots.*

1 The king's bench has a ſupreme juriſdiction over all criminal matters. 289, 292

KNAVE.—*Vide Words.*

L

LAMB.—*Vide Cattle.*

LAND.

THE king's title to it muſt always appear upon record. 28 ſ. 45
2 In recuſancy, the king cannot ſeize lands, till inquiſition found. *ibid.*

LARCENY.

1 Larceny is either ſimple or mixed; ſimple larceny is either grand or petty. *Page* 134 c. 33

2 Simple grand larceny is the taking and carrying away of goods, neither from the perſon nor the houſe, above the value of 12d. *ibid.* ſ. 1

3 Every indictment of larceny muſt have the *felonicè cepit* as well as *aſportavit.* *ibid.* ſ. 2

4 As all felony includes treſpaſs, if the party be guilty of no treſpaſs in *taking* the goods, he cannot be guilty of felony in *carrying them away.* *ibid*

5 One who finds goods and converts them to his own uſe *animo furandi* is no felon. *ibid.* ſ. 3

6 One who has the *actual poſſeſſion* of goods *by delivery*, cannot be guilty of felony in embezzling them afterwards. *ibid.*

7 A reaſon given for this rule of law. 135

8 But if thoſe who have the *poſſeſſion* of goods by delivery take away part thereof with intent to ſteal it, it is larceny. *ibid.* ſ. 5

9 For the poſſeſſion of a part diſtinct from the whole was gained by wrong, and not delivered by the owner. *ibid.*

10 To conſtitute larceny the property muſt be taken from *the poſſeſſion* of the owner. *ibid.* (N) 1

11 And if the felonious deſign be hatched ſubſequent to the delivery of the goods it is no felony. *ibid.*

12 But if the delivery of the goods be obtained with a *premeditated* deſign to ſteal them, the *poſſeſſion* ſhall ſtill be ſuppoſed to reſide, unparted with, in the owner. *ibid.*

13 And where the delivery of goods to another, is only made for the ſpecial purpoſes *of the perſon who delivers, them*, and is not made to the uſe of the *perſon to whom they are delivered* the *poſſeſſion* is conſtrued to remain with the owner, and the taking of them away is felony. *ibid.*

14 Inſtances of convictions upon this rule. *ibid.*

15 It is felony to take away goods of which a perſon has the *bare charg or the ſpecial uſe*, as a ſhepherd ſheep, &c. *Page* 136 ſ.

16 If a carrier, after he has brough goods to the place appointed, tak them away again ſecretly, *animo fu randi*, he is guilty of felony. *ibid.* ſ.

17 If goods be obtained under colou of the proceſs of law, the taking them felonioufly away is larceny. ſ.

18 A perſon who ſteals goods from on who had ſtolen them before, may b indicted for ſtealing the goods of th real and true owner. ſ.

19 An indictment for larceny may b brought, either in the county wher the goods were ſtolen, or in th county where they are found. *ibi*

20 But if goods ſtolen at ſea, be take into any county, the thief cannot b indicted for felony there, becauſe th original taking was not felony a common law. 13

21 By 13 Geo. 3. c. 31. Perſons ſtea ing goods in either part of the unite kingdom may be indicted in th other part of the united kingdo where they are found, &c. *ibi*

22 It was felony by common law t ſteal furniture from lodgings, *if th lodgings were taken, as a colour onl* to rifle them. *ibid.* ſ. 1

23 By 3 & 4 W. & M. c. 9. whoeve ſhall take away with intent to ſtea embezzle, or purloin any chatte bedding or furniture let to the with their lodgings, ſhall ſuffer in caſe of felony. *ibi*

24 A wife cannot be found guilty *wit her huſband* upon this ſtatute; no without, if the lodgings were let t him; and a joint taking ſhall b conſtrued his act only. (N)

25 The offender muſt be a lodger at th time the larceny is committed. *ibi*

26 The indictment muſt ſet forth th name of the perſon by whom th lodgings were let. *ibi*

27 The property ſtolen muſt be ſuc as may reaſonably be conſtrued fu niture of the lodgings taken. *ibi*

28 By 21 Hen. 8. c. 7. "If any ſe vant, above eighteen years of ag an

and not an apprentice, ſhall withdraw and go away from his maſter with any caſkets, jewels, money, or goods delivered to him to keep, to the intent to ſteal the ſame---or being in his maſter's ſervice, ſhall, without his aſſent, convert the ſame to his own uſe with a like intent, if above the value of 40*s.* he ſhall be guilty of felony." *Page* 138 ſ. 4

29 The offender muſt be ſervant, both at the time of the delivery of the goods, and at the time they are taken. ſ. 12

30 It is *ſtrictly* confined to ſuch *goods as are delivered to keep.* ſ. 13

31 A ſervant who receives goods from another ſervant, to keep for his maſter, is within the ſtatute. 139

31 No waſting of goods is within the act, nor any obligation or other *choſe in action.* ſ. 14

32 The things taken muſt be the property of the maſter *at the time.* 139 ſ. 15

33 What things ſhall be conſidered as ſuch property. *ibid.*

34 By 12 Ann. c. 7. the benefit of clergy is taken away from the offence of ſtealing the value of 40*s.* out of any dwelling or out-houſe, *generally*, excepting perſons under the age of 15 years. ſ. 16

35 By 7 Jac. 1. c. 7. thoſe who ſhall embezzle yarn, &c. &c. delivered them to work, ſhall be whipped, &c. on conviction by two juſtices. ſ. 17

36 By 17 Geo. 3. c. 56. the ſame puniſhment extended to ſervants in the hat, woollen, linen, fuſtian, cotton, iron, leather, fur, hemp, flax, mohair, ſilk, and dying manufactures, 140

37 By 15 Geo. 2. c. 13. if any ſervant of the bank, entruſted with the effects of the company, &c. ſhall ſecrete, embezzle, or run away with the ſame, he ſhall ſuffer death without clergy. 139, 140

38 By 5 Geo. 3. c. 25. and 7 Geo. 3. c, 50. if any ſervant, &c. of the poſt office, ſhall ſecrete or deſtroy any letter intruſted to, or coming to, his care, containing any ſecurity for the payment of money, he ſhall ſuffer death without clergy. *Page* 140

39 How an indictment upon this act muſt charge the offender. (N) 4

40 What *carrying away* will ſatisfy the word *aſportavit.* 140 ſ. 18

41 The leaſt removal is ſufficient though not quite carried off. 140, 41

42 As taking ſheets from a bed into a hall; or a horſe at graſs, though not out of the field; or goods from the head to the tail of a waggon; or an ear-ring out of a lady's ear, though it lodge in her hair, &c. *ibid.* (N) 5

43 But a bale lying horizontally, and ſet on its end, but not moved from *the ſpot*, is no aſportation. *ibid.*

44 To pull off the wool from another's ſheep, or to ſtrip their ſkins, or to take plate from a trunk, and lay it on the floor, are ſufficient aſportations. *ibid.*

45 Larceny may be committed by a *feme covert*, in ſtealing the goods of a ſtranger. ſ. 19

46 But not if ſhe take her huſband's goods. *ibid.*

47 A man may be guilty of larceny by taking away a wife with her huſband's goods on her. *ibid.*

48 Hunger and neceſſity is no excuſe for larceny. ſ. 20

49 Larceny cannot be committed of property any way annexed to the freehold. ſ. 21

50 Therefore, only a treſpaſs to ſteal corn or graſs growing, apples on a tree, lead from a houſe or church, unleſs they were ſevered at *one time* and taken away *at another.* *ibid.*

(Sed Vide Corn and Lead.)

51 The reaſon of this diſtinction. 143

52 By the common law a *choſe in action* is not capable of being *feloniouſly* ſtolen. ſ. 22

53 By 2 Geo. 2. c. 25. ſtealing any of the *ſecurities* therein named, is made ſuch felony, as ſtealing goods of the like value would be. *ibid.*

54 By 5 Geo. 3. c. 25. to rob any mail, or to ſteal any letter or packet, is death without clergy. 142, 143

55 Larceny cannot be committed of things of a baſe nature, as dogs, cats, bears,

bears, foxes, &c. &c. But by 10 Geo. 3. c. 18. a puniſhment is inflicted on *dog*-ſtealing. *Page* 142, 143 ſ. 23

56 Larceny may be committed of a *reclaimed* hawk, both at common law and by 37 Ed. 3. c. 19. *ibid.*

57 The property of which larceny is committed, muſt belong *to another.* ſ. 24

58 To take treaſure *trove*, wreck, waif, or ſtray, is not felony, unleſs firſt ſeiſed by the perſon intitled to them. *(Sed vide Shipwreck.)* 144

59 Fiſh at their natural liberty cannot be the ſubject of larceny at common law. *(Vide Fiſh.)* ſ. 25

60 Nor deer, hares, or conies, in a foreſt, chace, or warren; *(Vide Hunters—Black Act.)* nor old pigeons, being out of the houſe, &c. ſ. 26

61 But it is felony to ſteal creatures *feræ naturæ*, fit for food and reduced to tameneſs. *ibid.*

62 So, alſo, wild animals ſo incloſed that the owner may take them whenever he pleaſes. *ibid.*

63 It is felony to take ſwans marked, or pinioned, and unmarked, if in a private river or pond.—But *quære*, as to their eggs or young ones. *ibid.* 27

64 Horſes, or any creatures *domitæ naturæ*, and fit for food, as ducks, &c. or their eggs or young ones may be the ſubjects of larceny. ſ. 28

65 Felony may be of goods, the owner of which is unknown, and the indictment ſhall be *cujuſdam hominis ignoti.* ſ. 29

66 Stealing the goods of a chapel, church, or pariſh, may be laid *bona capellæ—bona domus et eccleſiæ--bona parochianorum.* 145

67 In ſtealing a ſhroud from a *dead corpſe*, the property muſt be laid in the owner of it when it was put on. *ibid.*

68 In what caſe a man may be guilty of larceny in taking goods, the abſolute property of which is in himſelf. ſ. 30

69 The value muſt extend 12*d.* or the ſtealing will be only petty larceny. *Page* 145 ſ. 31

70 If two perſons ſteal goods above the value of 12*d.* each of them will be guilty of grand larceny. 145 ſ. 32

71 The ſtealing to above the value of 12*d.* muſt be at the ſame time, not ſeparate acts of ſtealing; for the law will not permit things ſtolen at different times to be added together, in order to conſtitute either grand larceny or capital offence. ſ. 33 (N) 12

72 Caſes in which larceny is excluded from clergy. 146

73 Petty larceny is ſtealing goods of, or under the value of 12*d.* ſ. 34

74 All petty larceny is felony, and requires the word *felonicè*, but it is only puniſhed with forfeiture of goods, and whipping, &c. ſ. 36

75 If the indictment be for ſtealing to the value of 10*s.* and the jury find a general verdict *guilty*, but that the goods were worth but 10*d.* it is only petty larceny. ſ. 35

76 By 4 Geo. 1. c. 11. and 6 Geo. 1. c. 23. perſons convicted of grand or petit larceny, intitled to clergy, and liable to be burned in the hand, &c. may be tranſported for ſeven years. ſ. 27

77 There are no acceſſaries in petty larceny. (N)

L A W.

1 In what inſtance the law of *Moſes* agrees with the common law of England in the crime of murder. 121

2 How the common law differs with the law of *Moſes*, in reſpect to certain larcenies. 135

3 The *Moſaical* law rather proves the lawfulneſs, than the unlawfulneſs, of uſury. 528

4 If the court, in the time of peace, put a man to death, by *martial law*, both the judges and officers are guilty of murder. 130 ſ. 59

5 Aliens *invading* the kingdom, ſhall be tried by martial law. 51 ſ. 6

LAW BOOKS.

1 The king may grant the excluſive right to print law books—the reaſon of this privilege. *Page* 471 ſ. 6 (N) 6

LAWYER.—*Vide Counſellor. Barriſter. Attorney.*

LAYMAN.

1 The puniſhment of *a layman* for making an affray in the church. 271
2 The puniſhment of *a layman* for depraving the common prayer. 13, 14

LAZARETS.—*Vide Quarantine.*

LEAD.—*Vide Freehold. Stolen Goods.*

LEET.

1 All affrays are inquirable at the leet. 265 ſ. 1
2 The reaſon why the leet has no juriſdiction over a *private* aſſault. *ib.*
3 A nuiſance in *any way* is puniſhable by indictment in the court leet. 366 ſ. 1
4 A preſentment for not repairing an highway, in the court leet, is not traverſable, unleſs it concern the freehold. 416
5 As being bound to ſuch repairs in reſpect of the tenure of his lands, &c. 421

LETTERS.—*Vide Poſt Office.*

1 By 5 Geo. 3. c. 25. & 7 Geo. 3. c. 50. ſervants of the poſt-office embezzling any letter, packet, or bag of letters intruſted to his care, containing any ſecurity for the payment of monies, are guilty of felony without clergy. 140
2 And whoſoever ſhall rob any mail of, or ſteal any letter, packet, or bag of letters ſent or conveyed by the poſt-office, ſhall ſuffer death without clergy. *Page* 143
3 By 9 Geo. 1. c. 22. whoever ſhall ſend any anonymous or *fictitious* letter demanding money, veniſon, or other valuable thing, ſhall ſuffer death without clergy. 226
4 By 27 Geo. 2. c. 15. to ſend any *ſuch* letter, threatening to kill or murder another, or to burn their houſes, out-houſes, barns, ſtacks of corn or grain, hay or ſtraw, though no money, &c. be demanded, ſhall ſuffer death without clergy. *ibid.*
5 Conſtructions upon this ſtatute. (N) 6
6 By 30 Geo. 2. c. 24. to ſend any ſuch letter threatening to accuſe any perſon of any crime, puniſhable with death or tranſportation or pillory, or other infamous puniſhment, with a view to extort money, goods, &c. ſhall be pilloried, &c. or tranſported. *ibid.*
7 It is a very high offence to challenge another, by letter, to fight a duel, or to carry ſuch a letter. 266
8 Sending a letter full of provoking language without publiſhing it, is highly puniſhable. 356

LETTERS PATENT.—*Vide Monopoly. Grant.*

LEVYING WAR.—*Vide Treaſon.*

LEWDNESS.

1 All *open* lewdneſs, groſsly ſcandalous, is indictable as tending to ſubvert religion and morality. 10 ſ. 4, 5

LIBEL.

1 A libel is a malicious defamation in printing or writing, or expreſſed by ſigns, or by pictures. 352 c. 73
2 It is ſeverely puniſhed becauſe of its direct *tendency* to a breach of the peace. *ibid.* ſ. 3

3 So alſo ſcandal written in a ſcoffing or ironical manner, is libellous. *Page* 353 ſ. 4
4 So alſo defamatory writing, expreſſing only one or two letters of a name, but ſignificant of a particular perſon, is a libel. ſ. 5.
5 A friend of the party libelled, muſt prove that he underſtood its meaning, &c. *ibid.* ſ. 6
6 It is no juſtification of a libel that the contents are true. ſ. 6
7 The reaſons for this maxim. *ibid.* (N) 1
8 A writing which defames private perſons, is equally libellous as if the object of the defamation was a public character. 354 ſ. 7
9 But libels againſt public characters are moſt heinous. *ibid.*
10 But no ſcandalous or impertinent matter contained in public or in legal proceedings will amount to a libel, even if the court has no juriſdiction. ſ. 8
11 Yet if it manifeſtly appear that the ſole intention of the ſuit was for the purpoſes of defamation, it may be otherwiſe. *ibid.*
12 But no preſentment of a grand jury ſhall ever be eſteemed libellous. 355
13 Nor can any writing be libellous unleſs it reflects upon ſome perſon. *ibid.*
14 But writing an obſcene book may be puniſhed by the temporal courts. *ibid.* (N) 2
15 Thoſe who compoſe a libel may be puniſhed as well as thoſe who publiſh it, and ſo may thoſe who procure it to be compoſed or publiſhed. ſ. 10
16 Ignorance of the contents is no juſtification for diſperſing a libel. *ibid.*
17 And if a perſon either read or hear a libel, and afterwards maliciouſly read or repeat it, or lend it to another, he is guilty of publication. *ibid.*
18 Copying a libel is *prima facie* evidence of publication. *ibid.*
19 If ſervants publiſh a libel during their maſter's impriſonment, they having no poſſible acceſs to him, the crime ſhall not be imputed to the maſter, unleſs *ſome* privity appear. *ibid.* (N) 3
20 The *amanuenſis* of a libel is guilty of making it. *Page* 356
21 Sending a provoking letter to another, is highly puniſhable. ſ. 11
22 Sending a libel to the party defamed is a publication. *ibid.*
23 So a defamatory petition, if delivered to any but a member of parliament, is a publication. ſ. 12 & 15
24 But barely to read a libel without a previous knowledge that it was a libel; or hearing it to laugh at it as a libel; or only to have a libel in one's cuſtody, is not puniſhable. ſ. 13
25 But the cuſtody of a copy of a libel, publicly known, is evidence of publication. *ibid.*
26 And *quære*, if he who only repeats a libel in jeſt and merriment, is thereby guilty. *ibid.* 14
27 A libel is puniſhable by fine and corporal puniſhment in the diſcretion of the court. 357

LICENCE.

1 How far neceſſary to enable recuſants to go above five miles from home. 35. 40
2 In what caſes a dove-cote cannot be built by a tenant without licence from the lord. 362
3 The penalty of going abroad without licence. 74. 185
4 By 26 Geo. 2 c. 33. it is felony without clergy to forge a marriage-licence. 173
5 The manner in which retailers of ale, beer, ſpirituous liquors, ſtrong waters, and made wines ſhall be licenſed (*vide public-houſes*). 454 to 464

LIE.

1 He who gives *the lie* to another in Weſtminſter-Hall, ſitting the courts, ſhall be bound to his good behaviour. 89 ſ. 9
2 Obtaining money, &c. by no artful contrivance, but merely on *a bare naked lie* is not puniſhable criminally. 344

LIFE—*Vide Homicide. Excuſable. Murder. Manſlaughter.*

LIGEANCE.—*Vide Allegiance. Treaſon.*

LINEN.—*Vide Callico.*

LIMBS.—*Vide Maim.*

LIP.—*Vide Maim.*

1 In what caſes it is felony to cut off another's lip. *Page* 175, 176

LITERARY PROPERTY.—*Vide Books. Authors.*

LIVERY.

1 To give liveries for maintenance is highly criminal. 544 ſ. 43

LOCKS.

1 It is felony, without clergy, to deſtroy locks, &c. on navigable rivers. 198 c. 55

LODGER and LODGINGS.—*Vide Larceny. Burglary.*

1 It was doubtful at common law, whether robbing lodgings, *fairly taken*, of the furniture let with them, was felony. 137

2 If the lodgings were taken with an *original deſign* to ſteal the furniture, the taking was felonious. *ibid.*

3 By 3 & 4 Will. & Mar. c. 9. if any perſon ſhall take away with intent to ſteal any chattel or furniture, which by contract ſhall be let to him with lodgings, he ſhall ſuffer as in felony. *ibid.*

4 A wife cannot be found guilty *with her* her huſband on this ſtatute. *Page* 137 (N) 3

5 Nor without him, if the lodgings were let to him. *ibid.*

6 If the lodgings were let jointly, it ſhall be conſidered as the taking of the huſband only. *ibid.*

7 The offender muſt be a lodger *at the time* of the felony. *ibid.*

8 The indictment muſt ſtate the name of the perſon by whom the lodgings were let. *ibid.*

9 The property ſtolen muſt be *the furniture* of the lodings, or ſuch other thing, and may reaſonably be conſtrued to have been let with them. *ibid.*

10 The apartment of a lodger is his *manſion houſe*, and may be ſo laid in burglary, provided the landlord does not ſleep under the ſame roof. 164

11 If the landlord ſleep under the ſame roof, and the lodger's apartment is divided from the reſt of the houſe and has a ſeparate door, it may be laid as the manſion houſe of the lodger. 164

LONDON.

1 The charters of the city which require that the lord mayor ſhall be the principal in every judicial commiſſion, extend not to ſuch cauſes as are limited by ſtatute to particular judges. 178 ſ. 8.

LORD.

1 How far the lord may maintain the ſuit of his tenant. c. 83 ſ. 21

2 The licence of the lord where neceſſary to enable his tenant to build a dove-cote. 362

LORD's DAY.

1 No perſons to aſſemble out of their own pariſhes for any ſport whatſoever, nor any unlawful paſtimes to be uſed by perſons in their own pariſhes on Sunday, on pain of 3*s.* 4*d.* 11 ſ. 1

2 No market to be held on any feſtival, the

the four Sundays in harveſt excepted. *Page* 11 ſ. 2

3 No perſon ſhall publickly cry or ſell goods, except milk before nine in the morning, and mackrel out of church-time. ſ. 2 12 ſ. 4

4 No common carrier, drover, &c. ſhall travel on this day on pain of 20*s.* nor any boat or barge, unleſs allowed by a juſtice, on pain of 5*s.* —nor any game be deſtroyed—nor any houſe opened for publicly debating. 11 & 12 ſ. 4

5 But works of neceſſity or charity may be performed—meat may be dreſſed and ſold by victuallers—dinners may be baked by bakers, but *quære*, as to rolls, 11 ſ. 2 (N) 2

6 Fiſh carriages may travel on the Lord's day, and forty watermen may ply upon the Thames, hackney coaches may work within the bills of mortality. 12

LOOMS.

1 Deſtroying them, in certain branches, of manufactures, made felony without clergy. 230 ſ. 2. 231 ſ. 3, 4 & 5.

LOTTERY ORDERS.

1 By 25 Geo. 3. c. 57. the counterfeiting of lottery orders or tickets made felony without clergy. 209

2 The managers may act as magiſtrates in apprehending offenders. *ibid.*

3 A reward of 50*l.* for diſcovering, &c. of offenders, and a pardon to accomplices. *ibid.*

LOVE.

1 Such as took upon them to do any thing tending to provoke unlawful love were puniſhable by the 1 Jac. 1. c. 12. for witchcraft—but that act is repealed by 9 Geo. 2. c. 5. and pretenders to ſuch arts are puniſhable by a year's impriſonment, and ſtanding four times in the pillory, &c. 9

LUNATICS.—*Vide Madmen,*

1 Not puniſhable criminally. *Page* 2

2 Lunacy only, a partial derangement of mind. 2 (N) 2

3 Vagrant and dangerous lunatics may be ſecured by the juſtices of the place where they are found. 2 ſ. 4

LUNAR MONTH. *Vide Computation.*

M.

MACKREL.

1 MAY be ſold on Sunday. 12

MADMAN.

1 Madneſs is a total alienation of the mind. 2 (N) 2

2 Anciently madmen were puniſhed for treaſons againſt the life of Majeſty. 2 ſ. 2

3 At preſent, madmen are not puniſhable by any *criminal* proſecution whatſoever. 2 ſ. 1

4 If a priſoner become mad at any interval between commitment, arraignment, trial, conviction, judgment, or execution, all ſubſequent proceedings againſt him ſhall ſtop. 2 ſ. 3

5 But the madneſs muſt be plain and unequivocal, not any idle frantic humour. 2 (N) 2

6 How the fact of madneſs ſhall be tried. 3 (N) 5

7 By 17 Geo. 2. c. 5. vagrant madmen, whoſe diſorder is dangerous, may be ſecured and confined by an order of juſtices. 2 ſ. 4

8 A madman may be compelled to make ſatisfaction by a civil action. 3 ſ. 5

9 Madneſs induced by intoxication is no excuſe for the commiſſion of crimes. *ibid.* ſ. 6

10 Whoever incites a madman to commit a crime, is a principal offender. *ibid.* ſ. 7

11 It is no forfeiture of a recognizance for the peace, to confine a friend who is mad. *Page* 259 f. 23
12 The concluſion that ſelf-murderers muſt be madmen, is ill founded. 102 f. 3

MAGIC.—*Vide Witchcraft.*

MAIL.—*Vide Poſt Office. Larceny.*

MAIM.

1 Maim is an injury to the perſon of another, by which he is rendered leſs able to defend himſelf, or annoy his adverſary. 175 f. 1.
2. As weakening a man's hand or finger, ſtriking out his eye or foretooth, or caſtrating him. f. 2
3 But cutting off an ear, noſe, &c. are not *maims*, for it does not *weaken*, but only *diſfigures*. *ibid.*
4 All maim is felony. f. 3
5 How caſtration and other maims were anciently puniſhed. *ibid*
6 A man who maims himſelf, either to induce pity, by begging, or to avoid inliſting as a ſoldier, may be indicted and fined. 176 (N) 1
7 By 37 Hen. 8. c. 6. to cut off another's ear, otherwiſe than by law, chance medley, ſudden affray, or adventure, forfeits treble damages and 10*l.* to the king. *ibid.* f. 7
8 By 22 & 23 Car. 2. c. 1. by lying in wait, to cut off or diſable any limb, or member of another, *with intent to maim or diſfigure him*, or to aid, &c. therein, is felony without clergy. 176 f. 4
9 But no corruption of blood, loſs of dower, or forfeiture, &c. ſhall enſue f. 5
10 If the offender *maims*, he is within the above ſtatute though the primary intention was to *murder*, and not merely *to maim*. f. 6
11 If the offence be not within the act, the offender may be indicted or appealed for maim, at common law, or an action of treſpaſs (which is moſt uſual) may be brought for damages, (N) 2
12 There are no acceſſaries after the fact in maim. *Page* 176

MAINTENANCE.

1 Is an unlawful upholding of quarrels, to the hindrance of common right. 535 c. 83
2 And is either *ruralis*, or aſſiſting one in his pretenſions to another's land, &c. in the country, which is puniſhable by *the king*, with fine and impriſonment. f. 2
3 Or *curialis*, in a court of juſtice, by officiouſly intermedling in ſuits no way belonging to the party. f. 3
4 To aſſiſt with money, or to retain counſel for another, *ſeems* to be maintenance. f. 4
5 So it is ſaid, that to perſuade a counſel to aſſiſt another's cauſe, is maintenance. 536 f. 5
6 So to open the evidence to the jury, or to give evidence uncalled for, or to ſpeak as counſel, or to retain an attorney, &c. is maintenance. f. 6
7 So if a powerful patron threaten to ſpend money in another's cauſe, &c. f. 7
8 So if a juror ſolicit a judge to give judgment, &c. f. 8
9 But it is not maintenance to give another friendly advice what action to bring, or to recommend an attorney, &c. 537. f. 9
10 Nor even to give another money before a ſuit is commenced, except it be given for that purpoſe. f. 10
11 But *maintenance* may be as well after judgment, as pending the plea. f. 11
12 A remainder man, or reverſioner, may maintain the ſuit of the tenant in tail or for life. 538 f. 11
13 So the *leſſor* may maintain his *leſſee*, if the inheritance come in queſtion. *ibid.*
14 So the alienee may maintain the title of thoſe under whom he claims. *ibid*
15 So a leſſee, in future, upon a contingency, may maintain thoſe who poſſeſs the *term*. f. 13

16 So the heir apparent may maintain the anceſtor. *Page* 538 ſ. 14
17 And now ſince 4 Ann. c. 16. ſ. 9 which make all attornments needleſs, the grantee of a reverſion may maintain the tenant in poſſeſſion ſ. 15
18 A *warranter* is bound to maintain the tenant. 539 ſ. 16
19 Whoever has an equitable intereſt, even to a *choſe in action* may maintain another in a ſuit relating thereto. ſ. 17
20 So where perſons claim a common intereſt in the ſame thing, they may maintain each other. ſ. 18
21 And he who is bail for another, may interpoſe to have his appearance recorded, but not further. ſ. 12
22 A father, or heir apparent, or the huſband of an heireſs, may maintain ſuits reſpectively—but a godfather cannot advance money, &c. 540 ſ. 20
23 So the lord, or *ceſtui que uſe* of a ſeigniory, may maintain the tenants, &c. ſ. 21
24 And the tenant may *ſtand by* his lord at the trial. ſ. 22
25 A maſter may retain counſel for his ſervants, and ſtand by them at the trial, but he cannot ſpeak for them 541 ſ. 23
26 But the maſter cannot lay out money for his ſervant in *real actions*, as he may do to keep him from gaol in other actions, unleſs the ſervant conſent that his wages ſhall be ſo employed. *ibid.*
27 But a ſervant cannot lay out his own money in his maſter's ſuit. ſ. 2
28 A man may go with *his neighbour* to counſel, but he cannot ſupport him with money in *his* ſuit. ſ. 24
29 But a man may lawfully *give money* to a poor perſon to carry on his ſuit. ſ. 24
30 A counſellor may defend his client, but he cannot give him money to ſupport his cauſe, or threaten a juror in his behalf. 542 ſ. 27
31 An attorney *retained*, may conduct his client's cauſes in the courts of which he is an attorney, &c. but they cannot expend money for another without the expectation of repayment—and, *quære*, if *ſolicitors* can lay out money for a client. *Page* 542 ſ. 28
32 No counſellor or attorney can juſtify any deceitful practice in maintaining a client's cauſe. ſ. 29
33 And by ſtat. Weſt. they may be diſqualified, impriſoned for a year and a day, and otherwiſe puniſhed at the king's pleaſure. *ibid.*
34 Counſellors, &c. who are not ſworn, are equally within the ſtatute. ſ. 30
35 All fraud and falſehood tending to impoſe upon or abuſe the court, are within it. ſ. 31
36 Or where an attorney ſues out a falſe writ, or brings a *precipe* againſt a poor man, &c. or procures judgment without warrant, or pleads a *falſe* plea. ſ. 32 to 35
37 All maintenance is prohibited by the common law; the offenders are anſwerable in damages, and may alſo be indicted and fined and impriſoned. ſ. 36
38 A court of record may commit for maintenance in the face of the court.
39 By 1 Ed. 3. c. 14. none by ſending letters, or otherwiſe, ſhall maintain ſuits and quarrels.
40 By 1 Rich. 2. c. 4. maintenance by the king's ſervants, ſhall be puniſhed at *his pleaſure*—other leſs officers ſhall be impriſoned and diſqualified, and all other perſons by fine and ranſom. 544
41 Maintenance in a court baron, is within this act. ſ. 39
42 *Nul tiel record* a good plea to maintenance. ſ. 40
43 A perſon is not liable for taking out *an original* which is never returned. *ib.*
44 It is immaterial whether the plaintiff recovered, or was nonſuited. ſ. 41
45 Whoever fears that another will maintain his adverſary, may have a writ to prohibit him, ſ. 42
46 All perſons are prohibited from giving badges, &c. for maintenance. ſ. 43
47 By 32 Hen. 8. c. 9. none ſhall maintain any action where any perſon ſhall have authority to hold plea of

of lands—nor embace any freeholders, or jurors, or witneſſes, on pain of 10*l.* &c. *Page* 544 ſ. 44
48 On information on this ſtatute muſt alledge that the maintenance was "unlawfully" committed. 545 ſ. 45
49 Maintenance of a ſuit in a ſpiritual court, is not within any of the above ſtatutes. ſ. 46
50 So it muſt ſhew that a plea was depending. ſ. 47

MALICE.

1 Arſon cannot be committed unleſs the burning be malicious. 167 ſ. 5
2 But malice againſt one ſhall be conſtrued as malice toward all. *ibid.*
3 What ſhall be conſtrued malice expreſs and implied. 118
4 *Malitia aggreditur perſonam.* 103, 113, 126, 132

MALT.

1 Whether making corn into malt will alter the property. 139
2 Neither malt, nor corn bought to be malted, within the ſtatutes againſt foreſtalling. 484

MALUM IN SE.

1 Every nuiſance is *malum in ſe* 362 ſ. 8
2 Every monopoly is *malum in ſe.* 471

MANSION HOUSE.—*Vide Burglary.*

1 *Domus manſionalis* and *meſſuagium* are equipollent. 283
2 In arſon it is not neceſſary to lay the offence as in a *manſion houſe*, *domus* is enough. 166

MANSLAUGHTER.

1 Homicide *without malice* is called manſlaughter, and ſometimes *chance medley.* 115 c. 30
2 It is that killing which happens either on a ſudden quarrel, or in the commiſſion of an *unlawful act*, without an intention of miſchief. *Page* 115 ſ. 1
3 It muſt be done without premeditation, therefore there can be no acceſſaries before. *ibid.* ſ. 2
4 The ſpecial matter cannot be pleaded, but muſt be given in evidence on the general iſſue. 105 ſ. 3
5 To kill another, who claiming title to a houſe, attempts to enter it by force, or ſhoots at it, or who breaks a window to make an arreſt, or hedges, after being forbidden—is manſlaughters. 108 ſ. 23
6 In ſelf defence, where the circumſtances would otherwiſe *juſtify* the homicide, if the party kill the aſſailant without apparent neceſſity, it is manſlaughter. 109
7 If a huſband kill the man, with whom he finds his wife committing adultery it is only manſlaughter. 110 (N) 1
8 If a workman fling down a piece of timber *in play*, or in the frequented ſtreets, and it happen to kill, it is manſlaughter. 111 ſ. 4.
9 So if a parent or a maſter correct a child or a ſervant in a barbarous or immoderate manner, or make uſe of an unuſual or improper inſtrument for the purpoſe. ſ. 5
10 Therefore if an officer of the impreſs ſervice firing at a boat *in the uſual manner*, happen to kill, *at moſt* it is only manſlaughter. *ibid.* (N) 2
11 If death enſue by ſhooting at deer in a *third perſon's park*, or ſhooting a gun, or throwing ſtones in a place of public reſort, or by doing any idle action likely to create bodily hurt, or playing with ſwords, or firing piſtols in a highway, &c. is is manſlaughter. 112 ſ. 9 (N) 3
12 If he who draws upon another in a ſudden quarrel, make no paſs at him till *his* ſword be drawn, and then fight with him and kill him, he is guilty of manſlaughter only. 123 ſ. 28
13 If two fall out, agree to fight, fetch weapons, and during the heat of blood one kill the other it is manſlaughter. 124 ſ. 29
14 In-

14 Indulgencies are ſhewn to the frailties of human nature. *Page* 124 ſ. 30
15 But no infidelity, treſpaſs, words, geſtures, or provoking circumſtances, however malicious or aggravated will reduce the crime of murder to manſlaughter. 1, 33
16 But upon ſuch provocation if it plainly appear that he meant only to chaſtiſe, and not to kill—or if he had reſtrained himſelf till the other was on his guard, and then in fighting kill, it is only manſlaughter. 125
17 So alſo if one, ſeeing two fight, takes part with one of them and kills the other—or where a man finding a man in bed with his wife, or being actually ſtruck by another, or pulled by the noſe, &c. immediately kills him. ſ. 35, 36
18 It has been held manſlaughter only to kill another in contending for the wall; or in defence of his perſon from an *unlawful* arreſt, or of his houſe from a forcible entry; or if the poſſeſſion of a public room; or to revenge an injury done to a child; or in ducking another as a *pick-pocket*, or in defence of national character, &c. 125 ſ. 36, 37 and (N) 1
19 If a third perſon happen to be killed by one engaged in a combat with another, it is manſlaughter only. 127 ſ. 44, 45
20 If a ſervant ſeeing his maſter engaged, take his part and kill the adverſary it is manſlaughter only. 128 ſ. 49, 50
21 If an officer be killed in attempting to execute an *unlawful* writ, it is only manſlaughter. 130 (N)
22 By 1 Jac. 1. c. 8. a certain ſpecies of manſlaughter converted into murder. (*vide Murder.* No.) 115 to 117

MANUFACTURER.—*Vide Artificer*

MARINER.—*Vide Piracy.*

1 How mariners in the king's fleet, are puniſhable for ſodomy. 10
2 How for profane curſing and ſwearing. *Page* 12, 13
3 Mariners burning any magazine of powder, or any veſſel, or boat, or the tackle or furniture, ſhall ſuffer death. 76
4 By 39 Eliz. c. 17. idle mariners wandering againſt the injunctions of this act, ſhall ſuffer as felons without clergy. 183, 184
4 By 17 Geo. 2. c. 5. perſons begging as mariners, ſhall be deemed rogues and vagabonds. 184
6 If any mariner, &c. ſhall wilfully deſtroy the ſhip, &c. &c. to which he belongs, ſhall ſuffer death without clergy. 185, 186

MARKET TOWN.—*Vide Highway. Engroſſing.*

MARRIAGE.

1 By 3 Hen. 7. c. 2. whoever ſhall take away and defile, or marry any woman having ſubſtance, for lucre thereof, againſt her will, and to her diſparagement, or abet the ſame, or receive the woman, ſhall be guilty of felony. 171
2 By 39 Eliz. clergy is taken from principals and acceſſaries before. ſ. 52
3 The ſeveral determinations made upon theſe acts. ſ. 3 to ſ. 10
4 By 4 & 5 Phil. & Mary c. 8. whoever ſhall allure a girl under 16 and unmarried from her guardians, ſhall be fined and impriſoned two years. 172 ſ. 10
5 If the ſeducer deflower or marry her, he ſhall ſuffer 5 years impriſonment, and fine at diſcretion. *ibid.*
6 If any female above 12 years of age conſent to unlawful matrimony, ſhe ſhall forfeit all her lands to the next of kin, &c 172, 173
7 Various determinations upon this ſtatute. 173 (N) 2
8 By 26 Geo. 2. c. 33. to ſolemnize matrimony in any other place than where banns have been uſually publiſhed, unleſs by ſpecial licence, and except

except the parties are Jews or Quakers, &c. is felony and tranſportaon 14 years. *Page* 173 ſ. 11
9 To counterfeit, alter, or deſtroy any marriage regiſter, is death without clergy. ſ. 12
10 The forfeiture for a popiſh marriage. 34 37

MARSHAL.—*Vide Conſtable. Murder.*

MASTER.

1 Not juſtified in beating his ſervant in a cruel and barbarous manner or with an improper inſtrument. 111
2 A miſtreſs is included under the word "maſter," in 25 Edw. 3. reſpecting petty treaſon. 132
3 A maſter chaſtiſing a ſervant in actual ſervice, is not an aſſault, for which a recognizance of the peace ſhall be forfeited. 259
4 A ſervant may juſtify beating another in defence of his maſter. 260
5 How far a maſter may *maintain* his ſervant. 541

MASS.

1 By 23 Eliz. c. 4. to ſay or ſing maſs, incurs a forfeiture of 200 marks, and to hear maſs, 100 marks and a years impriſonment. 39
2 By 11 & 12 Will. 3. c. 4. whoever ſhall apprehend a popiſh prieſt for ſaying maſs, ſhall receive 100*l.* and the offender ſhall ſuffer perpetual impriſonment. *ibid.*
3 But by 18 Geo. 3. c. 60. this puniſhment is repealed, provided the offender takes the oath therein preſcribed. *ibid.*

MEAL.—*Vide Bread.—Baker.*

MEMBER.—*Vide Maim.*

MESSUAGE—*Vide Burglary.—Forcible Entry.*

MILES.—*Vide Computation.*

MILLER.

1 In what caſe a miller may be guilty of larceny. *Page* 135

MILLS.

1 By 9 Geo. 3. c. 29. maliciouſly to burn or deſtroy any mill, is felony without clergy. 224
2 Riotouſly and tumultuouſly to demoliſh or begin to demoliſh any mill or the works thereto belonging, is felony without clergy. 309

MINES.

1 To ſteal property from mines not larceny by the common law, becauſe of its adherence to the freehold. 141, 142
2 All mines of gold and ſilver belong to the king. 70
3 By 25 Geo. 2. c. 10. to break into any black lead mine, or into any pit or ſhaft, or unlawfully to take away any lead from a mine, without forcibly entering it, is whipping, &c. or tranſportation. 218
4 By 9 Geo. 3. c. 29. to damage or deſtroy mine engines, is tranſportation for ſeven years. 238
5 How far the king may grant an excluſive right to allum mines. 475

MISBEHAVIOUR.—*Vide Behaviour.*

MISCHANCE.—*Vide Homicide. Murder. Manſlaughter.*

1 A hurt by miſchance forfeits not a recognizance for the peace; but it is no excuſe in a civil action. 260 ſ. 27

MIS-

MISPRISION.—*Vide Theftbote.*

1 Miſpriſion ſignifies all ſuch high offences, as are nearly bordering upon capital. *Page* 86 c. 20
2 A miſpriſion is contained in every treaſon or felony. *ibid.*
3 The king may proceed for the miſpriſion only. *ibid.*
4 Miſpriſion is either negative or poſitive. *ibid.*
5 Miſpriſion of treaſon conſiſts in the *bare* knowledge or concealment of high treaſon. f. 2
6 What ſpecies of aſſent will convert miſpriſion into high treaſon. f. 3, 4, 5
7 A perſon who is *only told* that there will be a rebellious riſing without he *knows* of the circumſtances, is not bound to make diſcovery of ſuch information. 87 f. 6
8 By 13 Eliz. c. 2. to forge foreign coin not current, or to aid therein, is miſpriſion of treaſon. f. 7
9 Thoſe who *barely utter* falſe money knowingly, were only guilty of *a miſpriſion* at common law. (*Vide* coin.) 62 f. 56
10 Miſpriſion of felony is the concealment, or procuring the concealment of a felony, either by common law or ſtatute. 251 f. 2
11 Silently to obſerve the commiſſion of felony, is miſpriſion. (N) 1
12 Concealment of *treaſure trove* is miſpriſion of felony. *ibid.*
13 By 3 Edw. 1. c. 9. officers procuring or concealing felonies done in their liberties, or who will not arreſt the offenders, ſhall be impriſoned one year, and make grievous fine, or ſuffer three years impriſonment. f. 3
14 By 3 Hen. 7. c. 1. an inqueſt may be taken to enquire of concealments, &c. f. 4
15 Cauſing an abortion is only a high miſpriſion. 121

MISTAKE.

1 Cannot amount to a felonious intention. 99 f. 3

MIXTURE.—*Vide Bullion. Coin.*

MONEY.—*Vide Coin.*

MONKEY.

1 No felony to ſteal a monkey. *P.* 143

MONOPOLY.

1 Monopoly is a grant from the king of the excluſive right of property in any thing. 470 f. 1
2 It only differs from ingroſſing, in that the one is the grant of the king, and the other the act of the ſubject. (N) 1
3 Both monopoly and ingroſſing are equally reſtrained by the common law. *ibid.*
4 All ſuch grants are void, and the perſon who procures them is liable to be fined. 470
5 Becauſe they are againſt the freedom of trade, and detrimental to the publick. f. 2
6 But the king may inſtitute mercantile fraternities, with power to make bye laws for the regulation of, not to reſtrain trade. (2)
7 But he cannot grant the ſole importation of any particular merchandize. 471
8 Nor give individuals an excluſive right to trade within certain limits. (3)
9 For nothing but an act of parliament can reſtrain the freedom of trade. *ibid.*
10 An excluſive grant of the ſole ingroſſing of wills or making pleas, writs, &c. &c. is void. f. 4
11 Or of making, importing, and ſelling playing cards. f. 5
12 But the king may grant for a reaſonable time, the ſole property of any new invention. f. 6
13 Or the ſole uſe of ſome particular employments, as printing the holy ſcriptures, law books, &c. *ibid.*

14 The

14 The reaſon of this privilege. *Page* 471 (N) 4
15 Monopolizers *were* liable to fine and impriſonment. ſ. 7
16 By 21 Jac. 1. c. 3. all grants of monopolies or proclamations tending thereto are declared void. 472
17 Corporations diſabled to put any ſuch grants in force. ſ. 9
18 All ſuch grants, &c. ſhall be tried by the rules of the common law. ſ. 10
19 The trial muſt be in the courts of common law, and not in chancery, or in the council. ſ. 11
20 Therefore chancery will never eſtabliſh a right under a charter from the crown, until the validity of ſuch charter has been tried at law. (N) 5
21 But the court of chancery will cancel letters patent. *ibid.*
22 The uſe of the king's name, in *ſcire facias*, to repeal letters patent is of common right. *ibid.*
23 The effect and extent of patents can only be tried in the king's courts. *ib.*
24 Any perſon injured by the grant of a monopoly, may ſue for treble damages at law. 473
25 If any perſon after notice of ſuch action grounded on 21 Jac. ſhall obtain an injunction, or after judgment ſhall ſtop execution, he ſhall incur *a præmunire*. *ibid.* ſ. 13
6 But this ſhall not extend to letters patent for 14 years to the authors of new inventions, provided ſuch letters be not contrary to law, or of pernicious tendency. ſ. 14
27 The invention muſt be ſubſtantially new, and not an improvement only. 474
28 And *quære* if an invention which tends to deſtroy the neceſſity of manual labour can be the ſubject of a patent. ſ. 16
29 No old manufacture can be prohibited, or granted by a patent as for a new invention. ſ. 17
30 But the 21 Jac. c. 3. ſhall not extend to prejudice the privileges of corporations, &c. ſ. 19
31 Nor to any grants concerning the digging, making or compounding of ſalt-petre or gun-powder; or the caſting of ſhot for ordnance; or to offices in being *and execution* before the ſtatute not ſuppreſſed by proclamation. *Page* 475
32 By 16 Car. 1. c. 21. all perſons natives or aliens, may import gunpowder, and all ſubjects may make and ſell gunpowder or any of its ingredients, and if any perſons ſhall pretend an authority to the contrary, he ſhall incur a *præmunire*. ſ. 21 & 23
33 But by 21 Jac. 1. this ſhall not extend to any grant, &c. for digging allum mines or the making allum, —nor to licenſes for taverns ſelling wines, &c. ſ. 22
34 By 8 Ann. c. 19. the author of any book and his aſſigns, ſhall have an excluſive right to print the ſame for 14 years from the day of the publication. ſ. 24
35 And whoever ſhall print, or import, or expoſe to ſale the ſame without the author's written conſent, ſigned in the preſence of two witneſſes, ſhall forfeit 1 *d.* a ſheet. 466
36 A muſical compoſition, an ingenious abridgment; a uſeful index, &c. are ſecured to the author by this ſtatute. (N)
37 But the books ſo intended to be protected by this act muſt be entered at Stationers-Hall. ſ. 25 & 26
38 And after the ſaid 14 years the right of printing, &c. ſhall return to the authors, *if living*, for a further term of 14 years. ſ. 27
39 The caſe of literary property conſidered. (N) 7
40 The manner in which an author muſt aſſign his right with reſpect to the *contingent intereſt*. *ibid.*
41 By 8 Geo. 2. c. 13. engravings are ſecured to their proprietors for 14 years. ſ. 28
42 But to ſecure the property the proprietor's name *and* the day of *firſt* publiſhing the print, muſt not only be engraved on the plate but printed on the print. (N) 1

43 And whoever ſhall offend againſt this act, ſhall forfeit 5*s.* for every engraving. *Page* 478
44 But this act ſhall not extend to the purchaſers of plates. *ibid.*
45 By 17 Geo. 3. c. 57. proprietors of prints may recover damages and double coſts againſt thoſe who ſhall copy them without conſent. *ibid.*
46 By 15 Geo. 3. c. 53. the univerſities of *Great Britain*, and the colleges of *Eaton*, *Weſtminſter*, *and Wincheſter*, ſhall have the excluſive right to print *their own books* at their *own printing-preſſes*. ſ. 23

MONTH.—*Vide Computation.*

MOSS TROOPERS.—*Vide Borderers.*

MULTIPLICATION.

1 Of gold and ſilver, or practiſing to find out the philoſopher's ſtone, was formerly felony. 73, 14

MUM.—*Vide Public Houſes.*

MURDER.

1 Felonious homicide *with malice*, is either MURDER, or petty treaſon. 117 c. 31
2 Murder anciently ſignified the *private* killing of a man. ſ. 1
3 The *open wilful killing* was called voluntary homicide. *ibid.*
4 The law concerning *Engleſchire*. ſ. 1 & 2
5 How a pardon of murder muſt be worded. ſ. 2
6 By 23 Hen. 8 c. 1. all wilful murder *of malice prepenſe* excluded from the benefit of clergy. *ibid.*
7 MURDER is the *wilful* killing of another through *malice aforethought*. 118
8 Whenever death is cauſed by an act done with a *murderous intent* it makes the offender a murderer. 103
9 Whenever a perſon who kills another acts upon malice, however coloured by the *appearance of neceſſity*, it is murder. *Page* 105 ſ. 2
10 Whether facts amounting to juſtifiable homicide may be ſpecially pleaded to an indictment or appeal of murder. *ibid.* ſ. 3
11 How far the judge who paſſes ſentence muſt have juriſdiction over the offence, and in what manner the officer muſt purſue the judgment, in executing a convict, to avoid the guilt of murder. 105, 106
12 It is juſtifiable to kill a man who is attempting to murder. 109, 110
13 If a parent or maſter deſtroy the exiſtence of a child or ſervant by unmerciful and barbarous correction, or by uſing an inſtrument improper and likely to occaſion death —it is murder. 111 ſ. 5
14 Homicide done in the execution of *an unlawful and malicious* act is murder. 112 ſ. 10
15 Accidentally to kill a man by ſhooting at poultry *with intent to ſteal* them is murder. 112, 113
16 It is murder to kill, by going *deliberately* with a horſe uſed to ſtrike, or by diſcharging a gun among *a concourſe* of people; or by throwing a ſtone or a piece of timber from a houſe into a *frequented* ſtreet, &c. 113 ſ. 12
17 If a man ſtrike another upon malice prepenſe, and then fly to the wall and there kill him; yet he is guilty of murder. 113 ſ. 17
18 By 1 Jac. 1. c. 8. where any perſon ſhall ſtab another, *that hath not then any weapon drawn*, or that hath *not then firſt ſtricken*; and the perſon ſtabbed ſhall die thereof within ſix months, the perſon ſtabbing ſhall loſe the benefit of clergy, though no malice aforethought be proved. 115, 116
19 The ſeveral conſtructions which have been made upon this act. 116, 117
20 Homicide may be committed not only by thoſe means which are *directly* mortal, but alſo by ſuch as only probably

bably and eventually will occaſion death. *Page* 118 ſ. 4
21 As expoſing a ſick man to the inclemency of winter; or a child to the ravages of a bird of prey; or an innocent man to the falſe accuſations of another, on which he is condemned and executed; or to incite a madman either to deſtroy his own life or that of another; or to lay poiſon for one man and it is taken by another; or to place a priſoner in a room with another who has an infectious diſeaſe; or to deſtroy the conſtitution by denying a priſoner the decencies of nature, &c. &c. And *perhaps* by ſuffering a miſchievous animal to roam abroad. ſ. 5, 6, 7, 8 (N) 10
22 But no perſon, by any act, ſhall be ſaid to kill another unleſs he die within a year and a day. 119
23 How the year and day ſhall be computed. *ibid.*
24 If the perſon die within the year and day it ſhall be no excuſe that he might have recovered if he had been taken proper care of. 119 ſ. 10
25 Where the wound and death are both out of the kingdom, or the one in the kingdom and the other abroad, it could not be tried by the common law; but this is remedied by 2 Geo. 2. c. 21. 119, 120
26 Death in England of a wound given abroad, may be examined by the conſtable and marſhal, and by 33 Hen. 8. c. 23. if examined by the privy council, the principals may be tried in any county by commiſſioners. 119 ſ. 11
27 A murder at ſea anciently cognizable by the civil law. ſ. 12
28 Now by 27 Hen. 8. c. 4. & c. 15. it may be tried before the king's commiſſioners, according to the common law. 119, 120
29 How the killing of one who dies at land of a wound received at ſea ſhall be tried. 120
30 By 2 & 3 Edw. 6. c. 24. where the wound is given in one county and the death happens in another, it is triable where the death happens. 121
31 By 26 Hen. 8. c. 6. a murder in Wales may be tried in the next Engliſh county. *Page* 121 ſ. 14
32 The *malicious* killing of any perſon, whatſoever nation or religion he be of, or of whatſoever crime attainted is murder. ſ. 15
33 Cauſing an abortion was anciently held to be murder. ſ. 16
34 At this day it is only a great miſpriſion, &c. &c. *ibid.*
35 But where one counſels a woman to kill her *unborn* child and ſhe does it accordingly when it is born, he is an acceſſary to murder. 121 ſ. 17
36 And by 21 Jac. 1. c. 27. to conceal the birth of a dead baſtard child ſhall be evidence of having murdered it. *ibid.*
37 Any formed deſign of doing miſchief may be called malice. 121, 122
38 Where two perſons meet on a precedent quarrel, in cool blood, and fight and one of them is killed this is murder. 122 ſ. 21
39 And in duelling wherever the circumſtances afford the preſumption that the blood was cool at the moment of the homicide it is murder. ſ. 22, 23
40 No pretence under which malice may be covered ſhall elude the juſtice of the law. 123 ſ. 24, 25
41 If a man aſſault another with *malice*, and then fly, but on being followed kill his antagoniſt, it is murder. ſ. 26
42 To reſent provocation in a manner manifeſtly endangering life, is murder if death enſues. ſ. 27
43 In duelling not only principals but ſeconds alſo are guilty of murder if the fight prove fatal. 124 c. 21
44 No words, geſtures, &c. will excuſe from the guilt of murder. ſ. 33
45 Death occaſioned by beating another deliberately and vindictively is murder, although death was not intended. 126 ſ. 38, 39
46 Wherever a man happens to kill another in the execution of a deliberate purpoſe to commit a felony, he is guilty of murder. 126 ſ. 41

47 So alſo it is murder where not only the act of felony *immediately* cauſes the death, but where it occaſionally cauſes ſuch a misfortune. *Page* 126 c. 42

48 To kill a magiſtrate, &c. who *interpoſes* in a quarrel in order to ſuppreſs it, is murder. 127, 128 ſ. 44, 48

49 Where divers perſons reſolve generally to reſiſt all oppoſers in the commiſſion of any breach of the peace, and to execute it in ſuch a manner as naturally tends to raiſe tumults and affrays, and in ſo doing happen to kill a man, they are all guilty of murder. ſ. 46

50 But the fact muſt appear to have been committed ſtrictly in proſecution of the purpoſe for which the party were aſſembled. 128 (N) 3

51 How far a perſon may alleviate murder, by interpoſing to releaſe another from *unlawful* confinement. 129

52 To kill a ſheriff or any of his officers, in the *lawful* execution of civil proceſs is murder, although the proceſs be erroneous. 1. 9 ſ. 55, 56

53 How far homicide in an attempt to uſurp unlawful authority, ſhall be conſtrued murder. 130 ſ. 59

54 Death occaſioned by any idle wanton action, likely to endanger life, is murder. ſ. 60

55 A phyſician or ſurgeon, whoſe ignorant adminiſtration of medicine, may have occaſioned the death of the patient, is not thereby guilty of murder, though anciently held otherwiſe. 131

MUTE.

1 By 12 Geo. 3 c. 20. ſtanding mute in felony or piracy, either on an indictment or appeal, amounts to conviction. 154

N.

NAVAL STORES.

1 BY 9 & 10 Will. 3. c. 41. no perſons, except the officers authorized by the king ſhall make cordage of more than three inches, with a *white thread*—or of leſs than three *with a twine* laid the contrary way—nor any canvas with a *blue ſtreak*—or any other ſtores with *the broad arrow*, on pain of forfeiting the goods and 200 *l.* *Page* 562

2 Whoever ſhall have the poſſeſſion of ſuch ſtores, without a certificate, &c. ſhall forfeit 200 *l.* ſ. 2

3 The commiſſioners who ſell old ſtores, may grant ſuch certificate to buyers, who may alſo grant the ſame to thoſe who purchaſe again. 563 *ibid.*

4 Whoever ſhall counterfeit, or produce a falſe certificate, ſhall be bound over, by the commiſſioners, to the quarter ſeſſions. ſ. 3

5 The manner in which any perſon proſecuted for executing this act may be defended. ſ. 4

6 By 9 Geo. 1. c. 8. this offence is extended to timber, thick ſtuff, and plank. ſ. 5

7 The court may mitigate the penalties, and ſettle the diſtribution of them. 6, 7

8 Power given to judges of aſſize, or juſtices at ſeſſion, to determine the offence, and mitigate the penalty to public whipping and hard labour for three months. 564

9 By 9 Geo. 3 c. 30. the officers of the king's yards, and the commiſſioners of the navy, are authorized to act as juſtices of the peace, in apprehending, &c. offenders. ſ. 9

NAVIGABLE RIVERS.

1 To deſtroy any lock, ſluice, or floodgate erected thereon by authority of parliament, is tranſportation. 199 ſ. 2

2 By 8 Geo. 2. c. 20. the ſame offence ouſted of clergy. *ibid.* ſ. 3

3 To draw up any floodgate, on any wear upon a navigable river, is hard labour for a month. *Page* 199 ſ. 4
4 To draw up piles, &c. for ſecuring any marſh or ſea banks, incurs a *qui tam* penalty of 20*l.* &c. *ibid.* ſ. 5
5 The puniſhment and regulations of the black act extended to caſes of deſtroying ſea banks. 200
6 To break the bank of any river whereby lands ſhall be overflowed, is felony without clergy. *ibid.* ſ. 7
7 To deſtroy the *Bedford Level*, felony without clergy. *ibid.* ſ. 8
8 By 4 Geo. 3. c. 12. to deſtroy the works upon *any* navigation, ſo as to impede the carrying on of the ſame, is tranſportation. *ibid.* ſ. 9
9 Offences by obſtructing of havens; by bumb boats on the Thames; and by thefts on navigable rivers. *ibid.* (N)

NECESSITY.

1 Neceſſity, however extreme, is no *legal* excuſe for ſtealing. 141 ſ. 20
2 Where neceſſity will excuſe the coming of a popiſh prieſt into the realm. 68, 69
3 How far neceſſity is an excuſe for crimes. 5 (N)
4 To what extent it muſt ariſe to excuſe high treaſon. 54 (N) 3
5 How far neceſſity will juſtify, excuſe, or alleviate homicide, &c.
6 In what caſes it ſhall excuſe a nuiſance. 363, 404

NEIGHBOUR.

1 How far one neighbour may maintain another. 541 ſ. 25
2 Where one is guilty of nuiſance by incommoding his neighbour. 362 363
3 Where the neighbouring towns muſt cleanſe a river. 365

NETS.—*Vide Fiſh.*

NIGHT.—*Vide Burglary. Cattle.*

NIGHT-WALKERS.

1 They may be bound to their good behaviour. *Page* 262

NOBLEMAN.

1 May keep an unlicenſed tutor in his houſe. 18

NOSE.—*Vide Maim.*

NON-CONFORMITY.—*Vide Church. Diſſenters.*

NON-COMPOS.—*Vide Madmen.*

1 An offender, becoming ſo before conviction, ſhall not be arraigned; nor, if after an arraignment ſhall he be tried, and if after conviction he ſhall not be executed. 2 ſ. 2
2 But he ſhall anſwer for a treſpaſs againſt the perſon or poſſeſſion of another. 3 ſ. 5
3 A perſon becoming *non compos* by voluntary drunkenneſs, ſhall be puniſhed for his crimes, the ſame as if he were ſober, unleſs the intoxication has permanently diſordered the underſtanding. 3 ſ. 6

NON-JUROR.—*Vide Oaths.*

NON-FEASANCE.

1 An offence conſiſting of a *non-feaſance* needs no *venue*. 20 ſ. 5
2 In what caſe a non-feazance will amount to a forcible entry, though not to a forcible detainer. 280, 281
3 A man cannot commit an act of forgery by a bare non-feazance. 337 ſ. 6

NON-USER.

1 Whether it be a ground for diſcharging an officer. 311

NOTICE.

1 It is implied in all penal ſtatutes, that the defendant muſt have notice of the accuſation againſt him. *P.* 420 ſ. 83

NORTHERN BORDERS.—*Vide Rioters.*

NUISANCE.

1 A common nuiſance is an offence againſt the public by doing any thing injurious to *all* the king's ſubjects, or by omitting to do that which the common good requires. 360 c. 75
2 Therefore *private* annoyances, are not the ſubject of public proſecution, the injury muſt be repaired in a *civil* action. ſ. 2
3 Conſequently where the indictment charges the damage of private perſons only, it is bad. 361
4 It muſt be laid *ad commune nocumentum*; unleſs the ſubject neceſſarily imports a public grievance. ſ. 4, 5
5 The indictment of a common ſcold muſt be *communis rixatrix*. ſ. 5
6 Common bawdy-houſes are indictable as common nuiſances. 362 ſ. 6
7 So rope-dancing, common gaming-houſes, unlicenſed play-houſes. ſ. 7
8 But neither an old, nor a new dove-cote are nuiſances; for the erecting them may be juſtified by preſcription, &c. ſ. 8
9 And a gate acroſs a highway which has ſo continued time out of mind is no nuiſance, for the preſcription ſhall be intended.—But a new gate ſo erected may be abated as a nuiſance. ſ. 9
10 Tallow boilers, brewhouſes, glaſs-houſes, ſwine yards, a manufactory for acid ſpirit of ſulphur, &c. erected in improper places, may be nuiſances. 10
11 To divert the courſe of a navigable river, and *perhaps* to multiply inmates during the prevalence of a contagion, are nuiſances. 11
12 To diſturb the neighbourhood with a ſpeaking trumpet, to ſuffer a houſe to grow dangerouſly ruinous (*vide p.* 369.) to obſtruct the intercourſe of a public river, to damage a public highway, to put an improper ſhip into Billingſgate dock, are nuiſances. *Page* 363 (N) 1
13 But an hoſpital for inoculation is not a nuiſance, nor to lay bricks in a private fiſhery in the Thames, nor to violate a public law, nor to obſtruct a proſpect. *ibid.*
14 And *quere* if a coney burrow is a nuiſance. *ibid.*
15 By 9 & 10 W. 3. c. 7. to make or let off fireworks publicly, is a nuiſance. 364
16 By 9 & 10 Will. 3. c. 17. all private lotteries, &c. are public nuiſances. *ibid.*
17 By 6 Geo. 1. c. 18. ſ. 19. all public *bubbles* are nuiſances. *ibid.*
18 Any one may pull down a common nuiſance. ſ. 12
19 And may juſtify a *treſpaſs* for that purpoſe. 365
20 And the plea need not ſtate that the party did as little damage as poſſible. *ibid.*
21 Thoſe who have the fiſhery of a river, or thoſe who have a paſſage or eaſement therein, ſhall be obliged to abate a nuiſance on ſuch river, if none are bound to do it by preſcription. ſ. 13
22 A common ſcold is puniſhable by the ducking-ſtool. ſ. 14
23 The puniſhment of common nuiſance is fine and impriſonment. *ibid.*
24 And the offender ſhall be ordered by the judgment to abate the nuiſance at his own coſts. *ibid.*
25 NUISANCES TO HIGHWAYS. 366 and 404
26 Are puniſhable by indictment in the court leet. *ibid.* ſ. 1
27 A common river is a highway. *ibid.*
28 A thoroughfare is a highway. *ibid.*
29 Nuiſances in highways are not puniſhable by action. *ibid.*
30 Every way from town to town may be called a highway. *ibid.*
31 To dig a ditch, or make a hedge athwart a highway, or to lay logs of wood therein, even though a paſſage *may* be obtained by windings and turnings

turnings through them, or doing any other act which renders the paſſage incommodious, or by ſuffering the ditches to be foul, or boughs to overlay the road are nuiſances. *Pa.* 404
32 But it is no nuiſance to unload billets, unleſs they are ſuffered to remain an unreaſonable time. *ibid.*
33 To nuiſances to highways by THE STATUTE, *vide* Highways, No. to No.
34 An heir may be indicted for a nuiſance begun by his anceſtor and continued by him, 408 f. 61
35 An indictment for a nuiſance muſt ſhew where it was done. 421 f. 87
36 But it is not neceſſary to mention the *termini* of the highway in which it was done, nor where there are two vills is it neceſſary to ſhew in which it lies, (N) 20
37 For other matters relative to the neceſſary allegation of the indictment. 422
38 Nuiſances to turnpike roads. 437 f. 48
39 Nuiſances to bridges. 443

O.

OATHS.

1 BY the corporation act 13 Car. 2. c. 1. no member of any corporation ſhall be eligible, who ſhall not have received the ſacrament within one year before his election. 15
2 Every member of any corporation ſhall take the oaths of allegiance and ſupremacy, with the oath of office, or the election ſhall be void. *ibid.*
3 But by 5 Geo. 1. c. 6. all perſons required to take the ſaid oaths, or to ſubſcribe the declaration, ſhall be confirmed in their offices, notwithſtanding their omiſſion ſo to do. *ibid.*
4 And all perſons in office required to take the ſacrament, ſhall not be incapacitated by omiſſion after ſix months. 15, 16
5 By 2 Geo. 2. c. 31. and 9 Geo. 2. c. 26. all officers, civil and military, ſhall take the oaths of allegiance, ſupremacy, and abjuration. *Page* 16
6 By 11 Geo. 1. c. 4. officers of corporations ſhall take the oaths by law required, at the time of their admiſſion, &c. *ibid.*
7 By 25 Car. 2. c. 2. all officers, civil and military, except of inheritance appointing deputies; and all who have any fee, &c. by patent, except ſuch as do not relate to any place of truſt; and all who have employ in the king's houſe, ſhall take the oaths of allegiance, ſupremacy, and teſt, &c. upon pain of diſability and forfeiture of 500*l.* &c. 16, 17
8 Conſtructions and caſes upon this act. *ibid.*
9 The above act ſhall not extend to conſtables or churchwardens, or ſuch like inferior civil officers, or to a bailiff of a manor, or ſuch private officers. 17 f. 4
10 By 5 Eliz. c. 1. clergymen and recuſants refuſing a ſecond tender of the oaths, are guilty of high treaſon. 69 f. 84
11 By 1 Eliz. c. 1. 5 Eliz. c. 1. 3 Jac. 1. c. 4. 7 Jac. 1. c. 6. 1 W. & M. c. 8. and 7 Will. 3. c. 24. all eccleſiaſtical perſons, temporal officers, and certain other perſons in any public employ, ſhall take the oaths or be liable to the penalties of *præmunire*. 81 f. 27 to p. 84 f. 44
12 Several determinations upon the above ſtatutes. *ibid.*
13 By the common law, all laymen above the age of twelve years, are bound to take the oaths of allegiance. 94 f. 3
14 The reaſon of this obligation. 94, 95
15 The reaſon for requiring the oaths of allegiance and ſupremacy. 95 f. 4
16 By 1 W. & M. c. 8. the penalty of 40*s.* or three months impriſonment, is inflicted on thoſe who ſhall refuſe a tender of the oaths, and if they refuſe at the end of the three months, a further penalty, &c. 95, 96

17 It is in the option of government to adopt the milder punishment inflicted by this act, or the more severe one inflicted by the former statutes. *Page* 96
18 The reason of enjoining the oath of abjuration. *ibid.* s. 6
19 By 1 Geo. 1. c. 13. all officers civil or military, or in the service of the royal family, all ecclesiastics, members of colleges, of eighteen years of age—and all school-masters, preachers, high constables, and lawyers, shall, within three months after admittance, &c. take the oaths of allegiance, supremacy, and abjuration, or be disabled in law, &c. and forfeit 500*l.* 97
20 Any two justices, &c. may tender the oaths, and on refusal, the offender shall be adjudged a popish recusant convict. 98
21 How the members of the universities shall take the oaths, and what punishment they shall suffer. *ibid.* s. 9
22 No peer shall vote or make proxy, or sit in the house, nor any member in the house of commons, until he shall have taken the said oaths. s. 10
23 The oaths which the law requires to be taken previous to being naturalized. *ibid.* (N)
24 The oaths required to be taken by the peers of Scotland. *ibid*
25 By 22 Geo. 2. c. 30. the form of the Moravian affirmation is prescribed. *ibid.*
26 By 1 Will. 3 c. 18. and 8 Geo. 1. c. 6. the form of the Quakers profession and affirmation prescribed. *ibid.*
27 Money delivered in consequence of *an oath*, extorted by fear, is robbery. 148
28 He that demands surety of the peace must shew his grievance upon oath. 254

OBSCENITY.

1 Obscenity, tending to subvert religion and morality, punishable by indictment at common law. 10
2 Obscene writings *formerly* held not libellous *Page* 355
3 The author of obscene writings may be bound to his good behaviour. *ibid.*

OCCUPIERS.—*Vide Highways. Burglary. Arson.*

ODIO et ATIA.

1 A man committed for homicide might, anciently, sue out *de odio et atia.* 114, 115

OFFENCE.—*Vide Church. Crimes. Riot.*

OFFICE and OFFICERS.—*Vide Conformity.*

1 In what cases an office becomes forfeited by negligence, non-user or corruption. 310, 311
2 Public offices are not to be bought or sold. 312
3 How officers shall be punished for concealing offences. 251
4 What officers are bound to receive the sacrament. 15
5 Recusants are disabled to hold an office. 29, 34, 38, 40
6 How far execution must be performed by proper officers. 106
7 Victuallers, how far disabled to be officers. 452, 453
8 In what cases officers are protected in the execution of their duty. 117
c. 31, *passim.*

ORCHARDS.—*Vide Freehold.*

ORDERS.—*Vide Clergymen. Common Prayer. Highways.*

OVERT ACT.—*Vide Treason.*

OUT BUILDINGS.--*Vide Burglary.*

OWLING.—*Vide Exportation.*

P.

PACKET.—*Vide Letters. Poſt Office.*

PALACE.—*Vide infra.*

PALLISADES.—*Vide Fences.*

1 BY 4 Geo. 2. c. 32. whoever ſhall break, with intent to ſteal, any iron palliſade, or other iron, fixed to any dwelling, or to any out-houſe, uſed with ſuch dwelling, or to any orchard or yard, &c. or ſhall aid or aſſiſt in ſo doing, ſhall be guilty of felony. *Page* 218
2 A church is within this act. *ibid.*

PAPISTS.

1 By 3 Jac. 1. c. 5. popiſh recuſants convict are *diſabled* in law as perſons excommunicated, except the action concern ſome hereditament not ſeized by the king. 32, 33
2 By 1 Jac. 1. c. 4. this diſability continues only till they conform according to the 23 Eliz. c. 1. and 28 Eliz. c. 6. 33 (N)
3 How a defendant ſhall take advantage of an action by ſuch diſabled papiſt. 33 ſ. 2 to 7
4 By 1 W. & M. c. 26. and 12 Ann. c. 2. papiſts are *diſabled* to preſent to a church. 33 ſ. 7 and *p.* 44, 45
5 But he continues patron to all other purpoſes than that of preſentation. 45 ſ. 10
6 By 3 Jac. 1. c. 5. papiſts are *diſabled* from bearing any public charges, or office in the ſtate. 34
7 Obſervations upon this clauſe. *ibid.*
8 By 3 Jac. 1. c. 5. a female papiſt is *diſabled* from claiming any part of a huſband's perſonal eſtate, or any eſtate by way of courteſy or dower. *Page* 34 ſ. 10, 11
9 By 35 Eliz. c. 2. papiſts are *reſtrained* from going above five miles from home, without licence. 35
10 Who ſhall grant, and how ſuch licence ſhall be pleaded. *ibid.*
11 By what computation the diſtance ſhall be reckoned. *ibid.*
12 By 3 Jac. 1. c. 5. and 30 Car. 2. c. 5. papiſts are *reſtrained* from appearing at court. 54
13 By 3 Jac. 1. c. 5. papiſts are *reſtrained* from keeping arms, and from coming within ten miles of London. 36
14 By 3 Jac. 1. c. 5 feme covert papiſt, whoſe huſband is not convicted of recuſancy, who ſhall not conform within one year, ſhall forfeit two parts of her jointure. 37
15 By 3 Jac. 1. c. 5. a papiſt who has conformed, who ſhall not receive the ſacrament within one year ſhall forfeit 20*l.* for the firſt, 40*l.* for the ſecond, and 60*l.* for every other year. *ibid.*
16 By 3 Jac. 1. c. 5. every papiſt who ſhall marry otherwiſe than according to the church ſhall forfeit 100*l.* *ibid.*
17 By 3 Jac. 1. c. 5. every papiſt who ſhall not baptize his child by a lawful miniſter ſhall forfeit 100*l.* *ibid.*
18 By 3 Jac. 1. c 5. every papiſt, not excommunicated, who ſhall bury other than in a church or churchyard, ſhall forfeit 20*l.* *ibid.*
19 By 3 Jac. 1. c. 5. magiſtrates may ſearch the houſes of papiſts for popiſh relicks and deface them. 38
20 By 7 Jac. 1. c. 6. a feme covert papiſt who ſhall not conform within three months after conviction ſhall be committed unleſs her huſband pay 10*l.* a month, &c. *ibid.*
21 In what caſes the huſband of a feme covert papiſt is not only liable to the forfeiture, but utterly diſabled. *ibid.*
22 By 23 Eliz. c. 1. whoever ſhall perform *maſs*, ſhall forfeit 200 marks, and

and whoever ſhall hear *maſs* 100 marks, or ſuffer impriſonment. *Page* 39

23 By 11 & 12 Will. 3. c. 4. whoever ſhall apprehend a popiſh prieſt for ſaying maſs ſhall receive 100*l.* and the prieſt ſhall ſuffer perpetual impriſonment. *ibid.*

24 But by 18 Geo. 3. this penalty is repealed, *provided* the prieſt has complied with the injunctions of *this* act. *ibid.*

25 By 30 Car. 2. c. 1. thoſe who refuſe to make a declaration againſt popery, are reſtrained from ſitting in parliament, and from holding a place at court. 40

26 By 1 Will. & Mar. c. 9. thoſe who refuſe the declaration are reſtrained from living within ten miles of London, from keeping arms, and from preſenting to a church. *ibid.*

27 By 1 Jac. 1. c. 4. whoever ſhall ſend another abroad for the purpoſe of receiving a popiſh education, ſhall be diſabled in law and forfeit 100*l.* 41

28 By 3 Jac. 1. c. 5. whoever ſhall ſend a child abroad to prevent their good education in *England*, without licence, ſhall forfeit 100*l.* and ſuch child ſhall be diſabled to take, &c 42

29 By 3 Car. 1. c. 2. to enter into any popiſh ſeminary abroad, or to cauſe another ſo to do, diſables the offender in law, and incurs the forfeiture of his eſtates during life. *ibid.*

30 By 11 & 12 Will. 3. c. 4. a ſevere puniſhment is inflicted on profeſſed papiſts unleſs by 18 Geo. 3. c. 60. they have complied with the injunction of the laſt mentioned act. 44

31 By 3 Jac. 1. c. 5. and 1 W. & M. c. 26. profeſſed papiſts are reſtrained from preſenting to a church. 45

32 By 11 Geo. 3. c. 7. every grant by them of any eccleſiaſtical benefice is void unleſs made to a proteſtant purchaſer. *ibid.*

33 Expoſition made on the above ſtatute, 3 Jac. 1. c. 5. 45, 46

34 By 11 & 12 Will. 3. c. 4. popiſh ſchoolmaſters are to be perpetually impriſoned, except they conform to the 18 Geo. 3. c. 60. *Page* 46

35 By 11 & 12 Will. 3. c. 4. the chancellor may make ſuch order as he thinks agreeable to the act upon any popiſh parent who ſhall compel a proteſtant child to change his religion, or who ſhall not allow ſuch child a ſufficient maintenance. *ibid.*

36 By 3 Jac. 1. c. 5. whoever ſhall import or buy popiſh books or relicks ſhall forfeit 40*s.* *ibid.*

37 By 23 Eliz. c. 1. and 3 Jac. 1. c. 4. to become perverted, or to pervert others to the ſee of Rome is high treaſon. 67, 68

38 By 27 Eliz. c. 2. to become *ordained* by popiſh authority, is high treaſon. 68

PARDON.

1 The judges will, in prudence, reſpite the execution of an infant in order to procure a pardon. 3 *ſ.* 8

2 A king out of poſſeſſion cannot grant a pardon. 52

3 In what caſe a forfeiture is not within a general pardon. 24 *ſ.* 23

4 A pardon of felony diſcharges an indictment of high treaſon, if it want the word *proditorie*. 99 *ſ.* 2

5 The forfeiture of perſonalty for ſuicide, is ſaved by a pardon of the offence before inquiſition found. 104

6 A defendant where homicide is found either *excuſeable*, or juſtifiable, ſhall be diſmiſſed without a pardon. 105 115

7 What crimes cannot be pardoned without ſpecial words. 117

8 A pardon of felony extends not to piracy. 153

9 There can be no pardon of a recognizance of the peace before it is broken. 257

10 In what caſe the benefit of a general pardon cannot be waived. 292, 293

PARISH.—*Vide Nuiſance. Highways.*

PALACE.

1 In what caſes contempts againſt the king's palaces, are puniſhable. *P.* 87
2 How far popiſh recuſants are reſtrained from coming within the king's palaces. 35

PARKS.

1 By 21 Edw. 1. c. 2. & 3 & 4 W. & M. c. 10. treſpaſſers in parks, *reſiſting* the keepers, may be ſlain by the keepers with impunity. 107
2 How far the power of a park-keeper will juſtify the treſpaſs of a ſtranger, in homicide, on the grounds of a third perſon. 112
3 By 9 Geo. 1. c. 22. to appear, armed and diſguiſed, in any deer-park, &c. is felony without clergy. 187
4 To hunt or wound any fallow deer in any incloſed deer-park, whether armed and diſguiſed or not, is felony without clergy. *ibid.*
5 By 16 Geo. 1. c. 28. to enter any deer park, and hunt, kill, or wound any fallow deer, is tranſportation. 189
6 By 5 Geo. 3. c. 30. to ſteal deer from any incloſed deer-park, or to aid therein, incurs different pecuniary penalties for the two firſt offences, and tranſportation for the third. *ibid.*
7 This ſtatute *is ſaid* to have virtually repealed the puniſhment inflicted by 9 Geo. 1. c. 22. *ibid.* (N)
8 The manner of apprehending and trying offenders upon this act. 189, 190
9 Whoever armed with an offenſive weapon, ſhall enter into any deer-park, with intent to deſtroy the deer, and ſhall beat or wound the keeper, or his aſſiſtants, he ſhall be tranſported. 191
10 By 6 Geo. 1. c. 16. whoever ſhall deſtroy the fences of parks, ſhall be committed for 3 months, &c. &c. 122
11 By 16 Geo. 3. c. 30. whoever ſhall deſtroy the fences of deer parks, ſhall for the *ſecond offence* be tranſported. *Page* 122
12 By 6 Geo. 3. c. 48. to deſtroy timber in the king's parks, foreſts, or chaſes, is tranſportation for the third offence. 216
13 By 9 Geo. 3. c. 41. to deſtroy any underwoods, &c. in the king's parks or foreſts, &c. is puniſhable by fine and impriſonment, &c. 217
14 By 5 Geo. 3. c. 14. to enter into any incloſed parks, in or through which there is a river, ſtream, or pond, &c. and ſteal fiſh, or to aid in ſo doing, or to buy or receive ſuch ſtolen fiſh, is tranſportation for ſeven years. 224

Vide Murder. Hunters. Black Act. Deer.

PARLIAMENT.

1 By 25 Edw. 3. c. 2. the parliament only ſhall declare new treaſons. 66
2 To declare maliciouſly and by *writing*, that the crown of the kingdom cannot be limited by parliament, is *high treaſon*, and to affirm the ſame *by ſpeaking*, is *præmunire*. 69
3 By 30 Car 2. c. 1. none ſhall vote in parliament, without making the declaration, and taking the oaths. 40, 98
4 In what caſes petitions to parliament may be deemed libels. 354, 356

PARRICIDE.

1 There is no extraordinary puniſhment by the law of *England*, for the crime of parricide.

PARSNIPS.

1 By 13 Geo. 3. c. 32. to ſteal parſnips growing, incurs a forfeiture of 10*s.* &c. &c. 207

PARSON.—*Vide Church.*

PATENT.—*Vide Monopoly.*

PATRON.—*Vide Papiſt.*

PEACE.—*Vide Behaviour.*

1 Of what deſcription of perſons, a juſtice of the peace, may *ex officio*, and at diſcretion demand *ſurety of the peace.* *Page* 253
2 It was the principal duty of a conſervator to demand ſurety of the peace. *ibid* (N) 1
3 Neither a ſecretary of ſtate, nor privy counſellor, are conſervators of the peace. *ibid.*
4 All perſons *whatſoever*, under the king's protection, may demand ſurety of the peace. *ibid.* ſ. 2
5 It *has been* queſtioned, whether Jews, pagans, or convicts in *præmunire*, have a right to it. ſ. 3
6 A wife may demand it againſt the outrageous *threats* of her huſband; and a huſband may demand it againſt his wife. ſ. 4
7 If the marriage be diſputed, the court will frame the recognizance, ſo as not to admit the fact. *ibid.* (N) 2
8 A juſtice of peace ought to grant it, on demand, againſt any perſon, under the degree of nobility, of ſane memory, whether a magiſtrate or private perſon, and whether of age or not. 254
9 Infants and *femes covert*, ought to find ſecurity by their friends *ibid.*
10 The ſafeſt way againſt *a peer*, is by application to the chancery or king's bench. *ibid.*
11 *Quære*, If a joint recognizance may be taken for ſurety of the peace. *ibid.* (N) 2
12 For what cauſes ſurety of the peace is grantable. 254
13 By 21 Jac. 1. c. 8. all proceſs for the peace or good behaviour, to be granted out of the chancery or king's bench, muſt be upon motion, in open court, upon the oath of the party requiring it, &c. &c. &c. *Pa.* 254, 25
14 In what caſes, under what circumſtances, and in what form the court of king's bench will grant ſurety o the peace. 255 (N)
15 In what manner ſurety of the peac is grantable by a juſtice of the peace *ibid.* ſ.
16 Of the execution of the writ o *ſupplicavit.* ſ. 1
17 The warrant of a juſtice of th peace upon ſurety of the peace, ca be executed only by thoſe to whom it is directed, unleſs directed to the ſheriff, &c. 25
18 In what caſe the officer may carr the party to gaol, without anothe warrant. ſ. 1
19 How the officer ſhall return th warrant if it be general, and how i it be ſpecial. ſ. 1
20 In what manner proceſs upon ſure ty of the peace may be ſuperſeded ſ. 1
21 By 21 Jac. 1. c. 8. all writs o *ſuperſedeas* muſt be granted upo motion, in open court, and ſurety &c. 25
22 What ought to be *the form of th recognizance* entered into upon filing articles of the peace. 257 ſ. 15, 1
23 A recognizance of the peace ma be diſcharged by the demiſe of th king, or the party, if not previouſly forfeited. ſ. 1
24 But a releaſe of the party at whoſe complaint it was taken, is only a *inducement* with the court, to diſcharge it. *ibid.*
25 The diſcontinuance of a recognizance is a ground for diſcharging it 25
26 A recognizance cannot be pardoned or releaſed, before it is broken *ibid.*
27 The executors of ſureties to a recognizance, continue bound for their teſtators. *ibid.*
28 A recognizance, *by ſupplicavit*, nee not be certified without *certiorari* i brought. *ibid.* ſ. 1

29 A recognizance of the peace, taken below, muſt be certified to the next ſeſſion by force of 3 Hen. 7. c. 1. *Page* 258

30 If the party then make default, the recognizance then ſhall be certified into the ſuperior court. *ibid.*

31 But the ſeſſions have a diſcretion, upon cauſe ſhewn, to excuſe his default. *ibid.*

32 The ſeſſions cannot proceed for the forfeiture.—But upon eſtreating the recognizance, the courts at *Weſtminſter*, ſhall proceed to recover it by *ſcire facias*, and not by indictment. *ibid.*

33 *Quere* if the *ſcire facias* muſt ſhew the day on which the ſeſſions were holden. *ibid.* (N)

34 A recognizance of the peace may be forfeited by any actual violence *to any perſon whatſoever*. *ibid.* ſ. 20

35 Or by any treaſon againſt the king; or unlawful aſſembly; or even by words tending to a breach of the peace. *ibid.*

36 But bare words of heat and choler, is not a cauſe of forfeiture. 259

37 There are alſo many actual aſſaults on the perſon of another which do not amount to a forfeiture of ſuch recognizances. 259 ſ. 233

38 A variety of ſuch aſſaults enumerated. *ibid.*

39 A ſervant is liable to ſuch a forfeiture, for beating another in defence of his maſter's ſon—but not in defence of his maſter. 259, 260

40 Nor can a tenant beat another in defence of his landlord. 260

41 But a bare treſpaſs, without violence, is not a cauſe of forfeiture. *ibid.* ſ. 25

42 Violence in any athletick ſport, as cudgels, &c. is not a cauſe of forfeiture, but a wound given in *playing* with *naked ſwords* is. ſ. 26

43 A wound given by miſchance or negligence, is no cauſe of forfeiture. ſ. 27

44 Such a recognizance ſhall not be forfeited except for ſome *wilful breach of the peace*. *ibid.*

PEACE OFFICERS.—*Vide Riot. Affray. Murder. Armour Officers.*

PEACOCK.

1 In what caſe it is felony to ſteal one. *Page* 144

PEERS.

1 It is a contempt for a peer not to come to parliament on the day of ſummons; or to depart from it without licence. 91

2 How far ſurety of the peace may be demanded for or againſt a peer. 254 255

PENAL STATUTE.

1 In what caſes an offence, which is evidently within the meaning of the words, but out of the expreſs letter of a penal ſtatute, ſhall be conſtrued to be within the purviews of it. 53, 65, 132, 138, 178, 303, 304

2 Penal ſtatutes ſhall be conſtrued *equitably* for the ſubject, and *ſtrictly* againſt him. 53, 61, 116, 131, 138, 139

PENITENTIARY-HOUSES.—*Vide Tranſportation.*

PENETRATION.—*Vide Sodomy. Rape.*

PENSION.

1 To receive a penſion from a foreign prince without the king's permiſſion, is highly criminal. 91

PERMITS.

1 The offence of granting them fraudulently. *Page* 565 c. 91

2 By 6 Geo. 1. c. 21. all dealers in ſpirits, &c. ſhall make an entry of their ſtocks and places of ſale. ſ. 1

3 No ſtock ſhall be brought in before notice is given to the officer, and a certificate of the duty being paid, or that it has been condemned, or of the perſon's ſtock from whence it is brought. 566

4 None to be ſold but in ſuch entered places. ſ. 3

5 Officers to give ſellers a certificate to the buyer, expreſſing the quantity, names, &c. &c. ſ. 4

6 No quantity above one gallon to be removed without *a permit*. ſ. 5

7 Whoſoever ſhall have above 60 gallons, ſhall be deemed a dealer. ſ. 6

8 By 11 Geo. 1. c. 30. ſuch ſpirits ſhall be removed within the time limited in the permit, which ſhall be returned to the officer, and if the ſtock of the perſon removing ſuch ſpirits ſhall not appear to be proportionately decreaſed, he ſhall forfeit the quantity to be removed. ſ. 7

9 No perſon ſhall receive ſuch permit without direction in writing from the perſon *removing*, or his *known* ſervant. 567

10 By 23 Geo. 3. c. 70. the manner and form of granting *permits*, upon requeſt notes are directed, &c. ſ. 9

11 The commiſſioners ſhall provide paper for *permits* with the words *exciſe-office* viſible thereon—and plates, &c. for printing the ſame. ſ 10

12 And whoever, unauthoriſed, ſhall make, &c. or aſſiſt in making, &c. any frame or inſtrument for making ſuch paper,—or ſhall make or aſſiſt in making ſuch paper,--or ſhall make or aſſiſt in making any plate, &c for printing ſuch paper to be uſed for permits, ſhall be guilty of *felony without clergy*. 567, 568

13 And whoever ſhall forge, or counterfeit any permit, or give, accept, or receive any falſe or untrue permit, or alter, or eraſe any true permit,—or make uſe of the ſame, ſhall forfeit 500*l*. *Page* ſ. 13

14 And if *any officer of exciſe, or other inland duties*, ſhall deliver out any ſuch paper as aforeſaid, with the words *exciſe-office* viſible, &c.—or if any *ſuch officer* ſhall grant an *untrue permit*, or make an untrue entry thereof, &c. he ſhall be tranſported for ſeven years. ſ. 11

PERSON.—*Vide Larceny. Robbery.*

PERJURY.

1 Is the taking abſolutely, a wilful falſe oath, required in any judicial proceeding, and material to the point in queſtion, whether it is believed or not. 318 c. 69

2 It muſt be deliberately taken, and not the effect of ſurpriſe, inadvertency, or miſtake. 319 ſ. 2

3 It muſt be taken before thoſe who are empowered to adminiſter juſtice; and who have a competent juriſdiction of the ſubject matter. *ibid.* ſ. 3

4 As before perſons authorized by the king to examine witneſſes; or in a court of record upon iſſue therein; or before any court of equity, ſpiritual, or other lawful court whether of record or not; or before perſons authorized by ſuch courts, as the ſheriff upon a writ of enquiry. 319, 320

5 So it is perjury, to ſwear to a greater ſubſtance than a man poſſeſſes, in juſtifying bail; it may be committed, in ſwearing the peace againſt another before a juſtice; or reſpecting forfeitures, or defective titles to land before commiſſioners. 320

6 But no oath of a mere private nature can be the ſubject of perjury. *ibid.*

7 Neither can any promiſſory oaths; and therefore official oaths, for the true performance of duty cannot be puniſhed as perjuries, but ſuch an offender is liable to a ſevere fine. 321

8 No perſon can be indicted for perjury in a falſe oath, adminiſtered by a perſon who has not competent and lawful authority in the ſubject matter, on which the oath is taken. *Pa.* 321 ſ. 4
9 Therefore *quere* if even a magiſtrate is juſtifiable in adminiſtering a voluntary oath upon an extrajudicial matter. *ibid.* (N) 1
10 No oath adminiſtered by perſons under an aſſumed authority from courts of juſtice can be the ſubject of perjury. 321
11 But perjury may be committed in oaths adminiſtered under the authority of a commiſſion, after it is determined by the demiſe of the crown. 322
12 And *qu.* if perjury may not be committed in proceedings which are afterwards reverſed for error. *ibid.*
13 Perjury may be aſſigned on an oath ſtated to have been taken before one of the judges of aſſize, although the caption recites the commiſſion in which both are named, and the record of *Niſi prius* prove it to have been taken, as the form is, before them both. *ibid.* (N) 2
14 In what oaths perjury may be committed. *ibid.* ſ. 5
15 It is not material whether the fact ſworn be true or falſe. ſ. 6
16 It is ſaid the oath muſt be abſolute (but this has been determined otherwiſe, and a man who ſwears that "he believes," any thing to be true, which he knows to be falſe, is guilty of perjury. ſ. 7
17 The oath muſt be material to the matter in queſtion. ſ. 8
18 But *quere*, if it be not directly material, yet ſo circumſtantial as to bias the opinion of the jury, whether it *ſhould* not be puniſhed as perjury. 324
19 A defendant in ſwearing to an anſwer in equity, may be guilty of perjury although the fact to which he ſwears is not required to be anſwered by the bill. 325
20 So perjury may be committed in an oath tending to extenuate or aggravate the damages, as well as in an oath which is direct to the iſſue. *ibid.*
21 The degree of materiality is not neceſſary to be proved, nor is it neceſſary for the evidence to be ſuch as will intitle the party to recover; but it is incumbent on the proſecutor to prove the materiality. *Page* 325 (N) 3
22 It is not neceſſary that the oath ſhould be believed, or that the party ſhould be injured by it. *ibid.* ſ. 9
23 But on a proſecution for the perjury it will be credited until it is diſproved by two witneſſes, for which purpoſe, the party complaining of the perjury, is not an admiſſible witneſs. *ibid.* (N) 4
24 OF PERJURY BY STATUTE. 326 ſ. 11
25 By 8 Eliz. c. 9. whoever ſhall be convicted of perjury, upon that ſtatute, ſhall forfeit 20*l.* ſuffer ſix months impriſonment, be rendered incapable of being a witneſs until the judgment be reverſed; and then he ſhall be liable in damages to the party grieved. 327 ſ. 13
26 If he ſhall not have property to the value of 20*l.* he ſhall have both his ears nailed to the pillory. *ibid.* ſ. 14
27 One moiety of the forfeiture to the king; the other to the party grieved. *ibid.*
28 The quarter ſeſſions may enquire of perjury on this ſtatute. *ibid.*
29 But the juſtices have no juriſdiction over this offence at common law; and indictments are uſually preferred at the aſſizes. *ibid.* (N) 15
30 The ſtatute not to extend to ſpiritual courts. *ibid.* ſ. 5
31 Nor ſhall the ſtatute reſtrain the common law puniſhment, ſo as the judges do not inflict *leſs* than the act preſcribes. 328
32 Therefore the king's bench may inflict fine and pillory, without inquiring of the lands. *ibid.*
33 By 2 Geo. 2. c. 25. judges may, over and above the ſaid puniſhments, order the offender to be ſent to the houſe of correction, or tranſported for any term not exceeding 7 years. *ibid.*
34 In a proſecution on 5 Eliz. the words of the ſtatute muſt be exactly purſued. ſ. 17

35 It

35 It muſt alſo expreſsly alledge that the defendant was ſworn. *Page* 329
36 But it need not ſtate, that the perjury was committed by means of ſubornation, &c. 329
37 But no one can be guilty of perjury upon this act who may not, poſſibly, be guilty of the ſubornation. ſ. 19
38 No indictment, or *criminal* information, lies upon this ſtatute. *ibid.*
39 The ſtatute extends to no other perjury than that committed by *a witneſs*. 330 ſ. 20
40 And a *falſe affidavit* againſt another in a court of juſtice is not within the act. ſ. 21
41 And *qu.* if a falſe oath upon a writ of enquiry is within it. 331
42 But if the defendant ſhould *in the face of the court*, confeſs an affidavit to be falſe, the common pleas has puniſhed the offender under this act. *ibid.* (N)
43 The oath muſt be to the prejudice of another. *ibid.* ſ. 22
44 And the party who complains muſt have been actually grieved by it, and be ſo proved. 332
45 And *the manner* in which the falſe oath conduced to the prejudice muſt be ſet forth. *ibid.*
46 By a poſitive *averment*, and not by way of *innuendo*. *ibid.*
47 Therefore where the party is *benefited* by the perjury, the offender cannot be proſecuted on this ſtatute. *ibid.*
48 So alſo it muſt appear to have been committed in a cauſe properly depending between the plaintiff and the party for whom the offender was examined as a witneſs. 333
49 By 8 Geo. 1. c. 6. perjury may be aſſigned upon the quaker's affirmation. ſ. 24
50 By 31 Geo. 2. c. 10. perjury to obtain the probate to a ſeaman's will, or letter of adminiſtration to his effects, is DEATH WITHOUT CLERGY. 334
51 By 28 Geo. 2. c. 13. perjury, in ſheriffs or officers, upon any of the matters of the act incurs 500*l.*—and if committed by a priſoner, intending to take advantage of the act, is death without clergy. 334 (N) 6
52 How perjury ſhall be charged and aſſigned by 23 Geo. 2. c. 11. *Page* 334 ſ. 26, 2
53 How the court will treat an indictment ſeemingly defective. *ibid.* (N)
54 The court may order perjured witneſſes to be proſecuted, &c. 33 ſ. 2
55 By 12 Geo. 1. c. 29. attornies who ſhall practiſe after having been convicted of perjury, ſhall be tranſported for ſeven years. ſ. 2

PERSONATING.

1 By 4 & 5 W. & M. c. 4. whoever ſhall perſonate another before commiſſioners authoriſed to take bail, ſ as the perſonated *may* become liable, ſhall be guilty of felony. 17
2 By 8 Geo. 1. c. 22. 9 Geo. 1. c. 12 31 Geo. 2. c. 22. and 4 Geo. 3 c. 25. whoever ſhall perſonate a proprietor of any of the public ſtocks or funds, thereby endeavouring to receive any dividend, or annuity, of ſuch proprietor, as if he were the true proprietor, or who ſhall aſſiſt or aid therein, ſhall ſuffer death without benefit of clergy. 207, 208, 212, 21
3 Upon theſe ſtatutes it was reſolved *in Parr's caſe*; O. B. February ſeſſions 1787, *(ſince the body of the work was printed)* that the ſingle act of obtaining a dividend warrant, in the name of a proprietor, without accompanying the act with any attempt to receive the money on the warrant on it, although ſeveral hours intervened between the time of obtaining the warrant and the apprehending of the offender, is "endeavouring to receive," &c. within the words of the act.
4 By 31 Geo. 2. c. 10. whoever ſhall perſonate the name or character of any ſeaman, or other perſon intitled to wages, or other monies for ſervices on board any of the king's ſhips, or the executor, adminiſtrator, wife, relation, or creditor of ſuch perſon, in order to receive the monies ſo due to him, ſhall ſuffer death without clergy. 21

PETITIONING.

1 Endeavouring to frighten the king into a change of measures, by tumultuous petitioning, is a high contempt against his person and government. *Page* 92 s. 3.
2 By 13 Car. 2 c. 5. no address to the king or parliament, for alteration of any matter of church or state, shall be signed by more than twenty persons, unless first consented to by three justices, grand jury, or lord mayor, on pain of 100 *l.* 309
3 By 1 W. & M. c. 2. it is declared to be the right of the subjects to petition the king, and that all prosecutions for so doing are illegal. 310
4 But this act does not repeal 13 Car. 2. c. 5. *ibid.*
5 How far, and in what cases a petition to parliament may be deemed libelous. 354, 355

PETIT TREASON.

1 What was considered petit treason at common law. 131
2 It is confined by 25 Edw. 3. to a servant who kills his master, or a wife who kills her husband, or a priest his patron. *ibid.*
3 A son who kills his father is not within the act, unless he is a servant to him. *ibid.* s. 2
4 The murder of a mistress is petit treason. 132
5 If a servant has left his master at the time of the murder, yet it is treason if the malice were hatched during the service. *ibid.* s. 4
6 Aiders and abettors are within the act. *ibid.* s. 5
7 But if the fact do not amount to murder, it cannot be petit treason. s. 6
8 And if a stranger murder at the instigation of the servant, &c. in the absence of the servant, it cannot be petit treason. *ibid.*
9 But otherwise, if even constructively present. 133
10 A wife *de facto* only is not within the act. *Page* 133 (N) 2
11 A canonical obedience results from ordination, &c. *ibid.* s. 7
12 Petty treason and murder are of the same nature. *ibid.* (N) 3
13 The judgment for this crime. *ibid.*
14 Both principal and accessaries are debarred of clergy. 133 s. 8

PHILOSOPHER's STONE.—*Vide Multiplication.*

1 All persons at liberty to exercise their endeavours to make it. 73 s. 12

PHYSIC.

1 By 3 Jac. 1. c. 5. papists are disabled to practice physic. 29
2 How far a rash and fatal administration of physic shall be blameable. 131

PICKPOCKET.——*Vide Privately stealing.*

PICTURES.

1 Pictures maliciously drawn and exhibited may be libelous. 352 s. 2

PIDGEONS.

1 In what cases felony to steal them. 144
2 Where they shall be considered as nuisances.

PIRACY.

1 The right of the king to punish it. 152 (N) 1
2 How it was punishable at common law. *ibid.* s. 2
3 It may now be tried by the king's commission, after the course of the common law. *ibid.* s. 3
4 Ousted of clergy by 28 Hen. 8. c. 15. 153
5 The offence must be alledged to be done at sea. s. 6

6 The ſtatute does not alter the nature of the offence. *Page* 153
7 Not included in a general pardon of felonies, becauſe it is of a ſpecial nature. *ibid.*
8 How acceſſaries *were* to be tried. ſ. 7
9 They are now triable in the ſame manner as principals. 154
10 An attainder of piracy does not corrupt the blood. ſ. 8.
11 Unleſs the indictment be as for a robbery at common law. *ibid.* (N) 2.
12 How an offender ſtanding mute ſhall be puniſhed. *ibid.* ſ. 9
13 No piracy unleſs the offence would have been felony if done on land, and the indictment muſt be both *felonicè et piraticè*. ſ. 10
14 The ſtatute extends not to creeks, &c. within the body of a county. *ib.*
15 By 11 and 12 Will. 3. c. 7. the trial of pirates may be either at ſea or upon land at any places abroad. 155
16 To commit hoſtility at ſea under colour of a foreign commiſſion is piracy. *ibid* ſ. 13
17 Captains or ſeamen betraying their truſt, running away with the ſhip, &c. yielding it up, or confederating with pirates, &c. deemed piracy. ſ. 14
18 Acceſſaries in piracy deſcribed and ouſted of clergy. 156
19 And ſhall be tried as principals are directed to be by 28 Hen. 8 *ib.* ſ. 16
20 To trade with pirates, or to fit out ſhips for that purpoſe, &c. deemed piracy. 157
21 To board a merchant-ſhip, and throw the cargo overboard, deemed piracy. *ibid.* ſ. 18.
22 Ships fitted out to correſpond with pirates, are forfeited. *ibid* ſ. 19.
23 All perſons made acceſſaries by 11 & 12 Will 3. deemed principals and excluded from clergy. ſ. 20.
24 Seamen, maimed by pirates, intitled to admiſſion to Greenwich Hoſpital, but if they neglect to defend themſelves, they ſhall be impriſoned ſix months and forfeit their wages. *ib.*
25 Pirates tried for the felony ſhall not be afterwards tried for the high treaſon. 158
26 To ranſom a neutral ſhip or to ſet her free before ſhe is brought into port, deemed piracy. *Page* 158 ſ. 22
27 A ſeſſion of admiralty muſt be holden twice a year at the Old Bailey or at ſuch other place as three commiſſioners ſhall direct. 159
28 Commiſſioners, juſtices, ſheriffs, &c. impowered to act with reſpect to piracy. *ibid.* ſ. 24

PLACE.

1 How an indictment for a nuiſance muſt deſcribe the place. 421

PLAGUE.—*Vide Quarantine.*

PLANTATIONS.—*Vide Woods & Shrubberies.*

1 By 9 Geo. 1. c. 22, to deſtroy trees planted in any avenue or growing in any garden, orchard, or plantation, &c. is felony without clergy 215

PLANTS.

1 By 6 Geo. 3. c. 36. to deſtroy *in the night time*, any root, ſhrub, or plant of the value of 5 *s.* in any incloſed ground, or to aid, &c. is tranſportation for ſeven years. 21
2 By 6 Geo. 3. c. 48. to deſtroy any plant, &c. in any cultivated lands 40 *s.* for the firſt offence, 5 *l.* for the ſecond, and tranſportation for the third. 21

PLATE.—*Vide Forgery.—Stamps.*

PLAYS and PLAYHOUSES.

1 By 1 Car 1. c. 1. there ſhall be no interludes or common plays uſed by any perſons in their own pariſhes on the lord's day. 1
2 By 3 Jac. 1. c. 21. whoever ſhall uſe the name of the Trinity in any pla

play or interlude, profanely or jestingly, shall forfeit 10*l.* *Page* 13
3 A playhouse may become a common nuisance, if it draw together such numbers as become inconvenient. 362
4 By 10 Geo. 2. c. 28. actors of plays in unlicensed houses are deemed rogues and vagabonds, &c. and are liable to a penalty of 50*l.* 560
5 A true copy of all dramatic works shall be sent to the lord chamberlain, fourteen days before representation, signed by the manager, &c. on pain of 50*l.* 561
6 The lord chamberlain may prohibit the representation. *ibid.*
7 Plays acted in public houses shall be deemed to be acted for hire, &c. *and liable to the above penalties.* *ibid.*
8 The manner of recovering the penalty. *ibid.*
9 By 17 Geo. 2. c. 5. all common players deemed rogues and vagabonds. 570

PLEAS.—*Vide Murder.*

1 All pleas *in disability* ought to be pleaded before imparlance, and conclude with a demand if the plaintiff shall be answered. 33 *s.* 2
2 A plea on 3 Jac. 1. c. 5. against a recusant convict, ought to shew where the plaintiff was convicted, the record of which must be produced. *ibid.* *s.* 3
3 How such a plea shall be pleaded, if the plaintiff conform. *ibid.* *s.* 4, 5, 6
4 In pleading a matter grounded on a statute, it must be strictly pursued. 35
5 In what manner a plea in bar to an action for usury shall be pleaded. 533
6 The consequence to an attorney for pleading a matter which he knows to be false. 543

POISONING.—*Vide Murder.*

POLES.—*Vide Freehold.*

1 The punishment for destroying them. *Page* 214, 216, 238

POLYGAMY.—*Vide Bigamy. Marriage.*

PONDS.—*Vide Fish. Parks. Black Act.*

1 Any man may, of common right, erect fish-ponds. 516
2 By 5 Eliz. c. 21. to break down the head of fish-ponds is three months imprisonment and surety for seven years. 221

POPE and POPERY. *Papists. Præmunire. Church. Treason.*

POST-OFFICE.

1 By 5 Geo. 3. c. 25. and 7 Geo. 3. c. 50. if any officer, servant, post-boy, or rider, employed by the post-office, shall secrete or destroy any letter, packet, or bag of letters, which he may be intrusted with, containing any security for money, or shall steal such security out of any letter, he shall suffer death without clergy. 140
2 If the indictment charge the offender as acting in one department of the office, and the verdict find him guilty as a servant in another department, not connected with that charged in the indictment, it is good in arrest of judgment. *ibid.* (N) 4
3 By 5 Geo. 3. c. 25. and 7 Geo. 3. c. 50. whoever shall rob any mail in which letters are sent by the post-office, of any letter, packet, or bag, or shall steal any letter, bag, or packet, from any such mail, or from the post-office, or from any of the receiving houses, shall suffer death without clergy, 143

POSSESSION.—*Vide Treason. Larceny. Bailment.*

1 How far the *poſſeſſion* of goods follows *the property.* *Page* 136
2 Where two claim land, the poſſeſſion is in him who has the right. 282, 283
3 How far the poſſeſſion ſecures a man from the guilt of a forcibly entry. *ibid.*
4 When poſſeſſion barrs reſtitution. 289 to 292

POSTS.—*Vide Fences.*

POST FINE.—*Vide Forgery.*

1 To counterfeit the hand of the receiver is felony. 213

POSSE COMITATUS.

1 The ſheriff may raiſe it to enable him to execute a writ of reſtitution. 289 f. 52
2 A juſtice may raiſe the *poſſe* to remove a forcible entry or detainer. 294 f. 2
3 Sheriffs and juſtices may raiſe it to execute the king's writs, if they apprehend reſiſtance. *ibid.*
4 Sheriff, under-ſheriff, conſtables, and every peace-officer may raiſe it to ſuppreſs a riot. 297
5 The manner in which the *power of the county* ſhall be uſed. 300, 301

POTATOES.

1 By 13 Geo. 3. c. 32. to ſteal potatoes growing in any garden or grounds, incurs a penalty of 10*s.* &c. 217

POULTERERS.

1 How puniſhable for conſpiring to raiſe the price of victuals. 481

POWDIKE.

1 By 22 Hen. 8. c. 11. cutters of *Powdike* in the county of Norfolk ſhall be puniſhed as felons. *Page* 198, 199

PRAYER.—*Vide Church. Common Prayer.*

PREACHERS.—*Vide Affrays. Diſſenters. Common Prayer.*

PREAMBLE.

1 In what caſes the preamble ſhall explain the ſenſe of a ſtatute. 17

PRE-EMPTION.—*Vide Purveyor.*

1 By 12 Car. 1. c. 24. the power of pre-emption is aboliſhed. 18

PREROGATIVE.—*Vide King. Contempts.*

PRESCRIPTION.—*Vide Nuiſance. Highways. Bridges. Extortion.*

PRESENTMENT.——*Vide Libel. Highways. Leets. Churchwardens. Conſtables.*

PRETENDER.——*Vide Treaſon. Præmunire.*

PRETENDED TITLES.

1 The offence of buying or ſelling them. 553 c. 8
2 To buy or ſell any doubtful or diſputed titles to lands, to the intent that the buyer may carry on the ſuit

is a high offence at common law. *Page* 553 ſ. 1
2 It is immaterial whether the title be good or bad, or whether the party were in poſſeſſion or not. *ibid.*
4 By 1 Rich. 2. c. 9. no defendant ſhall alienate lands in ſuit, &c. and the diſſeiſee of ſuch lands ſhall recover againſt the original diſſeiſor, if he commence his ſuit within a year and a day. 554
5 Feoffments of this kind are only void in reſpect of the diſſeiſees. ſ. 3
6 By 13 Ed. 1. c. 49. none of the king's houſe ſhall buy any title while the thing is in diſpute. *ibid.*
7 By 32 Hen. 8. c. 9. all ſales of pretended titles to lands, &c. where the party or his anceſtors have been in poſſeſſion of the ſame, or of the remainder or reverſion, or taken the rents one whole year before ſuch ſale, ſhall be void, and the land forfeited, if ſued for within a year. ſ. 4
8 But a perſon in poſſeſſion of lands, &c. may buy pretended titles, &c. 555
9 It is not material whether *any ſuit be depending* for theſe lands or not. ſ. 7
10 The plaintiff need not recite this ſtatute in an action on it. ſ. 8
11 In an action againſt *the buyer*, it muſt appear that *he* did know that the ſeller had not been in poſſeſſion, &c. for a year. ſ. 9
12 It muſt be averred that *the ſeller* had a pretended title. ſ. 10
13 The value of the land at the time of the bargain muſt be ſet forth. ſ. 11
14 A contract for a cuſtomary eſtate; or for a leaſe for years is within the ſtatute. 566
15 And it is not neceſſary to ſtate the commencement or the end of ſuch leaſe. ſ. 13
16 Even a leaſe *by reputation*, though void in law, is within this act. ſ. 14
17 A diſſeiſor obtaining a releaſe from a diſſeiſee; or a mortgagor redeeming his land, are not within the ſtatute. ſ. 15
18 One who gains poſſeſſion of land by judgment of law, in affirmance of an ancient title, is not within the act in reſpect of any leaſe made of ſuch lands. *Page* 366 ſ. 16
19 But otherwiſe if the title is ſtill conteſted, and the leaſe was made for the purpoſe of maintenance. *ibid.*
20 If a diſſeiſee enter upon a diſſeiſor in poſſeſſion under a pretended title and immediately ſell to a ſtranger, it is within the ſtatute. 557
21 But ſuch a ſale by a father to a ſon is not. *ibid.*
22 But ſuch a ſale to a brother of the half blood is. *ibid.*
23 In what caſes he who is in lawful poſſeſſion may buy or ſell pretended titles. ſ. 17
24 By 32 Eliz. c. 5. this offence may be laid in any county. 558

PRÆMUNIRE.

1 The offence of *præmunire* ariſes from ſtatutes made to preſerve the ſovereignty of the crown, from the incroachments of Rome. 77
2 The hiſtory of theſe incroachments. 77, 78
3 The ſeveral *ancient ſtatutes* enumerated, by which the making uſe of *papal bulls*, was firſt created *præmunire*. 78, 79
4 By 13 Eliz. c. 2. whoever ſhall purchaſe any *bull* from Rome, is guilty of high treaſon. 79
5 It is in the option of the crown to proceed on the ancient ſtatutes for the *præmunire*, or on the 13 Eliz. for the treaſon. *ibid.* ſ. 13
6 By 13 Eliz. c. 2. the aiders of ſuch offenders after the offence incur a *præmunire*. *ibid.*
7 By 27 Edw. 3. c. 1.—38 Edw. 3. c. and 16 Rich. 2. c. 5. it is made præmunire to derogate from the king's common law courts. 79
8 The ſeveral conſtructions which have been made on the above ſtatutes. 80
9 By 24 Hen. 8. c. 12. c. 21. & 25 Hen. 8. c 19. to appeal to *Rome*, from any of the king's courts is *præmunire*. *ibid.*
10 By 26 Hen. 8. c. 14. exerciſing the juriſdiction of a *ſuffragan* without leave of the biſhop is *præmunire*. *ibid.*

11 By 25 Hen. 8. c. 20. refuſing to conſecrate a biſhop is *præmunire*. *Page* 80.
12 By 5 Eliz. c. 1. maintaining the pope's power, is made a *præmunire* upon the firſt conviction, and high treaſon on the ſecond. 81
13 By 13 Eliz. c. 2. it is made *præmunire* to bring in any *agnus dei*, croſſes, or ſuch ſuperſtitious reliques. *ibid.*
14 Whoever ſhall receive ſuch *reliques* to wear, without diſcovering the offender, ſhall incur *præmunire*. *ibid.*
15 A juſtice ſhall incur the like offence, who, on information, does not diſcover the offender to a privy counſellor in 14 days. *ibid.*
16 By 1 Eliz. c. 1. 5 Eliz. c. 1. 3 Jac. 1. c. 4. 7. Jac. 1. c. 6. 1 W. & M. c. 8. and 7 Will. 3. c. 14. refuſing to take the oaths of allegiance, ſupremacy, &c. incurs the pains of *præmunire*. 81, 84
17 Several adjudications on the two firſt of the above recited ſtatutes. 82
18 By 6 Ann. c. 7. to affirm that the pretender has any right to the crown, or that the parliament cannot limit the ſucceſſion of it, is *præmunire*. 84
19 By 1 & 2 P. & M. c. 7. to moleſt the poſſeſſors of the abbey lands granted by Henry 8. is *præmunire*. 85 (N)
20 By 21 Jac. 1. c. 3. to procure any action to be irregularly delayed, is *præmunire*. *ibid.*
21 By 16 Car. 1. c. 21. and 1. Jac. 1. c. 8. to pretend authority to obſtruct the importation of gunpowder, &c. is *præmunire*. *ibid.*
22 By 12 Car. 2. c. 24. to be guilty of purveyance incurs *præmunire*. *ibid.*
23 By 13 Car. 2. c. 1. to aſſert that either houſe of parliament has legiſlative authority without the king is *præmunire*. *ibid.*
24 By 31 Car. 2. c. to tranſport a ſubject contrary to the *habeas corpus* act, is *præmunire*. 87
25 By 20 Car. 2. 7. conſpiracies to avoid the ſeizure of cattle in certain caſes is *præmunire*. *ibid.*
26 By 6 Ann. c. 23. to treat othe than of the election when aſſemble at *Holyrood Houſe*, is *præmunir* *Page* 8
27 By 6 Geo. 1. c. 18. to open *bubble* ſimilar to the South-ſea project, i *præmunire*. *ibid.*
28 By 12 Geo. 3. c. 11. whoever ſhal ſolemnize, or aſſiſt in, or be preſen at the marriage of any of the de ſcendants of Geo. 2. other than ſuc iſſue as ſhall ſpring from connectio with foreign families, without th previous conſent of the king ſpeci fied in the licence, regiſtered in th privy council, ſhall incur the pain of *præmunire*. 8
29 In what manner the offence o *præmunire* ſhall be puniſhed. 84, 8

PRIEST.—*Vide Papiſt. Church Treaſon.*

PRINCE and PRINCESS.

1 How far within the ſtatute of treaſons. 53, 5

PRINCIPAL.—*Vide Acceſſary.*

PRINTING.——*Vide Monopoly Author, Books.*

PRISONER.—*Vide Gaoler. Con tempts.*

PRIVATE PERSON.

1 How far a private perſon may ſup preſs an affray. 16

PRIVATE WAY..——*Vid Nuiſance. Highway.*

PRIVY COUNCIL.——*Vide Con tempts. No.* 30.

1 An inſurrection for the purpoſe o laying violent hands on a priv coun

counſellor, *is ſaid* to be high treaſon. *Page* 54 ſ. 25.
2 By 3 Hen. 7. c. 14. conſpiracy by the king's ſubordinate ſervants, to murder a privy counſellor is felony. 74
3 By 9 Ann. c. 16. to attempt to kill, or wound a privy counſellor in his duty, is felony without clergy. *ibid.*
4 Homicide beyond ſea, being examined by the privy council, may be tried in any county by commiſſion: 119
5 A privy counſellor is in danger of *præmunire* by ſtopping an action againſt a monopoliſt. 473

PRIVATELY STEALING.

1 By 8 Eliz. c. 4. whoever ſhall ſteal from the perſon of another, any goods privily without his knowledge, ſhall not be admitted to clergy. 150

PROCLAMATION.

1 In what caſes recuſants may be convicted by proclamation. 24
2 How offenders againſt the black act, may be obliged to ſurrender on proclamation. 187, 188
3 How ſmugglers may be proclaimed and convicted. 229

PROHIBITION.

1 In what caſes prohibition will lie for hereſy. 7
2 It does not lie in any proceeding on the ſpiritual law, unleſs ſomething be attempted in derogation of the common law. *ibid.*

PROMISSORY NOTE.—*Vide Forgery.*

PROPERTY.—*Vide Larceny. Burglary.*

PROTESTANT DISSENTERS.—*Vide Diſſenters.*

PROTESTANT SUCCESSION.

1 By 4 Ann. c. 8. and 6 Ann. c. 7. to maintain *by writing*, that the *pretender* has any right to the crown, or that parliament cannot bind and limit the ſucceſſion thereof, is high treaſon, and to affirm the ſame *by adviſed ſpeaking, is præmunire. Pa.* 69
2 By 1 Ann. c. 7. adviſedly to hinder the acceſſion of any one who is next in ſucceſſion to the throne, according to the 1 W. and M. and 12 W. 3. is high treaſon. *ibid.*
3 By 13 Will. 3. c. 3. the pretender is *attainted* of high treaſon. *ibid.*
4 By 17 Geo. 2. c. 39. to hold correſpondence with him or his ſons, is high treaſon. 69, 70

PROVISIONS.—*Vide Papiſts. Victuals.*

PROSECUTION.—*Vide Conſpiracy.*

PROVOCATION.—*Vide Murder. Manſlaughter.*

PUBLICATION.—*Vide Libel.*

PUBLIC HOUSES.

1 Publicans may be indicted for encouraging diſorders; and for refuſing to entertain gueſts. (*Vide Innkeeper.*) 451, 452
2 By 12 Ed. 2. c. 6. no perſon concerned in the *aſſize* of wine or victuals, ſhall be either a publican or victualler. 452, 453
3 By 3 Hen. 8. c. 8. directions are given how the aſſize of wine and victuals ſhall be ſet. 453
4 By 21 Jac. 1. c. 21. publicans and innholders are directed to diſpoſe of

their commodities, and *horſe bread*, at reaſonable prices. *Pa.* 453, 454
5 By 5 & 6 Ed. 6. c. 25. two juſtices, one of the *quorum*, ſhall have power to remove, diſcharge, and ſuppreſs common alehouſes. 454 ſ. 9
6 A publican ſuppreſſed upon this act, cannot be licenſed again, except in open ſeſſions. ſ. 10
7 By 5 & 6 Ed. 6. c. 25. and 26 Geo. 2. c. 31. no public houſes ſhall be kept, except in fairs, but by ſuch as ſhall be allowed in open ſeſſions by two juſtices, 1 Q. ſ. 11.
8 This exception extends only to the place where the fair is actually held; not to any houſe adjoining to it. *ibid.* (N) 1
9 And beer brewed in fairs muſt pay the exciſe duty. *ibid.*
10 By 2 Geo. 2. c. 28. the reaſons are given for the preſent mode of licenſing public houſes. 455
11 Lodging and boarding houſes, however public, do not require licence. (N) 1
12 By 26 Geo. 2. c. 31. yearly licenſes ſhall be granted in counties from the 1ſt. to commence 29th of Sept. by two juſtices *of the diviſion*, at ſuch place, as they, by public notice, ſhall previouſly direct. 455
13 Every licenſed publican ſhall be bound in a recognizance of 10*l.* to preſerve proper œconomy and good order. ſ. 13
14 The uncontrouled power of juſtices in granting licenſes, and the inſtances of miſconduct for which alone the king's bench will examine their proceedings. 456 (N) 4
15 By 5 & 6 Ed. 6. c. 25. the quarter ſeſſion, by *preſentment or information*, ſhall enquire into recognizances forfeited, and award proceſs accordingly. ſ. 14
16 The juſtices may *order* a public-houſe to be ſuppreſſed. *ibid.* (N) 5
17 By 26 Geo. 2. c. 31. juſtices may take away licenſes unleſs cauſe can be ſhewn, that the condition of the recognizance has been fulfilled. ſ. 15
18 If the juſtice convicts without ſummoning the party, he is liable to an information. *ibid.* (N) 5
19 But the juſtices cannot ſuppreſs a licenſed public houſe, except for diſorders amounting to a nuiſance, or for a breach of the recognizance, *Page* 457 (N) 7
20 A conviction for a breach of the recognizance diſables the offender to ſell either malt or ſpirituous liquors for 3 years, and renders his licence void. 457
21 By 5 and 6 Ed. 6. c. 25. any two juſtices may commit an unlicenſed publican, until he binds himſelf not to ſell liquors without licence, &c. 457, 458
22 By 26 Geo. 2. c. 31. the exciſe-man's book ſhall be good evidence to prove a man to be an ale-houſe keeper. 458
23 Juſtices may ſummon and examine perſons whom they ſhall ſuſpect to be unlicenſed; and ſuppreſs the houſe. 458, 459
24 The recognizances taken by the juſtices, on licenſing public houſes, ſhall be tranſmitted to the ſeſſions. 459
25 The clerks of the peace ſhall give an account of the recognizances to the juſtices, at their yearly meetings. *ib.*
26 By 26 Geo. 2. c. 31. no licence ſhall be granted to any perſon not licenſed the preceding year, unleſs ſuch perſon produce a certificate from his pariſh, of the propriety of his character. 460
27 This certificate not neceſſary in licenſing houſes in cities and towns corporate. *ibid.*
28 If a publican die or remove, his licence ſhall continue till the next licenſing day. 460, 461
29 By 26 Geo. 2. c. 13. no juſtice concerned in the ſale of liquors, ſhall be concerned in granting licenſes. 461
30 By 4 Jac. 1. c. 4. to deliver ale and beer for ſale, to an unlicenſed perſon, incurs a forfeiture of 6*s.* 8*d.* a barrel. *ibid.* ſ. 26
31 By 2 Geo. 2. c. 28. retailers of *diſtilled liquors* ſhall be licenſed in the ſame manner as common publicans. ſ. 27
32 By 10 Geo. 2. c. 17. retailers of *made wines*, who are publicans, ſhall be licenſed by two juſtices. ſ. 28

33 By 16 Geo. 2. c. 8 ſellers of *ſtrong waters* ſhall be firſt licenſed by the commiſſioners of exciſe. *Page* 469 ſ. 29
34 But no perſon ſhall be thus licenſed, unleſs previouſly licenſed by two juſtices. 461, 462
35 By 2 Geo. 2. c. 28. juſtices of peace ſhall have the ſame juriſdiction over retailers of ſpirituous liquors as they have over common publicans. 462 (N)
36 By 17 Geo. 2. c. 17. whoever ſhall mix liquors for ſale at home, or ſend quantities of leſs than two gallons abroad, deemed retailers. 462 ſ. 30
37 By 11 Geo. 2. c. 26. clandeſtine ſellers deemed retailers. *ibid.* (N)
38 By 9 Geo. 2. c. 23. giving liquors to ſervants or appprentices, &c. deemed retailing. *ibid.*
39 By 24 Geo. 2. c. 40. no licence, in London, ſhall be granted but to occupiers of 10*l.* a year, &c. nor in other places, but to thoſe who pay to *church and poor*. ſ. 31
40 By 9 Geo. 3. c. 6. liquors found in the houſe of an unlicenſed perſon may be ſeized. ſ. 32
41 By 24 Geo. 2. c. 40. officers, by warrant may break open doors, &c. 463
42 By 13 Geo. 3. c. 56. the penalty of retailing diſtilled liquors without a licence, is increaſed from 10*l.* to 50*l.* ſ 34
43 By 26 Geo. 2. c. 31. the *repreſentatives* of a publican may uſe the unexpired term of his licence without producing the certificate required by No. 26. ſ. 35
44 In caſe any licenſed houſe becomes empty after the licenſing day, two juſtices at a petty ſeſſions, may grant a licence till the general licenſing day, upon the production of certificate required, No. 26. 464
45 Retailers of liquors in priſons ſhall be deemed common publicans. *ibid.*
46 The commiſſioners of the exciſe ſhall not licence any perſon to ſell ſpirituous liquors, who is not previouſly licenſed to ſell ale and beer by two juſtices. *ibid.*
47 By 5 Geo. 3. c. 46. every perſon convicted of ſelling ale and beer, or other exciſeable liquors by retail without licence ſhall forfeit 40*s.* and coſts for the firſt offence, 4*l.* for the ſecond, 6*l.* for the third, &c. *Page* 464, 465
48 The manner in which the juſtices may hear and determine the offence. 465
49 The penalty on witneſſes not obeying the ſummons. *ibid.*
50 How perſons aggrieved may appeal. 466
51 By 21 Jac. 1 c. 7. &c. publicans ſhall forfeit 10*s.* for encouraging or permitting tippling in their houſes. *ibid.*
52 How the penalty for ſo doing is to be levied. 467
53 How this offence ſhall be puniſhed in the univerſities. *ibid.*
54 By 4 Jac. 1. and 21 Jac. 1. c. 7. drunkards are puniſhable with a forfeiture of 5*s.* or, on default of payment, with ſix hours confinement in the ſtocks. 467, 468
55 Repeated or continued tippling incurs a forfeiture of 3*s.* 4*d.* or confinement four hours in the ſtocks. 468
56 All officers ſhall be charged to preſent ſuch offence—but one puniſhment only ſhall be inflicted. *ibid.*
57 The juriſdictions of the eccleſiaſtical court and of the two univerſities, is ſaved. 469
58 By 7 Jac. 1. c. 10. if any publican be convicted, on 1 Jac. 1. c. 9. or 4 Jac. 1. c. 5. he ſhall, in addition to the above penalties, be diſabled to keep a publick houſe for three years. *ibid.*
59 By 30 Geo. 2. c. 24. if any licenſed publican ſhall ſuffer labourers, ſervants, &c. to game in his houſe, he ſhall forfeit 40*s.* for the firſt offence, and 10*l.* for every ſubſequent offence. *ibid.*
60 And the parties who ſo game ſhall be liable to pay a penalty from 5*s.* to 20*s.* or be committed to hard labour. *ibid.*

PUBLIC

PUBLIC WORSHIP.—*Vide Church.*

PURLIEU.—*Vide Chace. Foreſt. Park. Deer, &c.*

PURVEYORS.

1 The hiſtory of purveyance and preemption. *Page* 181
2 The principle of it denied by magna charta. *ibid.*
3 Aboliſhed by 12. Car. 2. c. 24. *ibid.*

Q.

QUARE IMPEDIT.

1 IN *a quare impedit*, if the biſhop plead *hereſy*, he muſt ſhew the particular point. 6, 7

QUARRELS.—*Vide Affrays.*

QUARANTINE.

1 By 26 Geo. 2. c. 26. all veſſels, perſons, and goods, coming from a place ſuſpected by the privy council to be *infected*, ſhall perform *quarantine*, in ſuch manner as the king ſhall direct, &c. 241
2 If the plague ſhall appear on board any ſhip, being to the northward of *Cape Finiſterre*, the commander ſhall proceed to *St. Helen's pool*, &c. until the king's pleaſure be known, on pain of death without clergy. *ibid.*
3 The king's ſhips may force any veſſel obliged to perform *quarantine*, to repair to the place appointed—and if any commander ſhall conceal having the plague on board, he ſhall ſuffer death without clergy. 242
4 Penalties for not making a true diſcovery of the other particulars directed by the act. *ibid.*
5 Whoever, being ordered to perform *quarantine*, ſhall refuſe to repair to the *lazarets*, or ſhall eſcape or attempt to eſcape therefrom, &c. ſhall ſuffer death without clergy. *Page* 242
6 And any perſon not infected, nor liable to perform *quarantine*, how ſhall enter into any *lazaret*, or other place for performing quarantine, and ſhall attempt to return, or to make his eſcape therefrom, before the time is expired, he ſhall ſuffer death without clergy. *ibid.*
7 Officers neglecting their duty, forfeit 100 *l.* &c. &c. *ibid.*
8 Whoever ſhall clandeſtinely convey any goods or letters, &c. from any ſhip or *lazaret*, performing quarantine, ſhall ſuffer death without clergy. *ibid.*

QUEEN.

1 A queen regnant is within the meaning of the words, "our lord the king," in the ſtatute of treaſons. 53 ſ. 20
2 A queen dowager is not within the ſtatute. ſ. 22
3 A queen divorced *a vinculo matrimonii* is not within the ſtatute. 53 (N) 2

R.

RAPE.

1 IS the carnal knowledge of a woman by force. 169
2 Nothing leſs than actual penetration and emiſſion can amount to a rape; but emiſſion is *prima facie* evidence of penetration. *ibid.* ſ. 1
3 It is no excuſe that the woman at laſt yielded, or conſented after the fact; or was a common ſtrumpet; or conceived from the fact. 170 ſ. 2
4 But if ſhe make no complaint *at the time*, it is a ſtrong ground for preſuming conſent. *ibid.* ſ. 3
5 By 18 Eliz. c. 7. whoever ſhall carnally know a woman child under ten years

years of age, ſhall ſuffer as a felon without clergy. *Page* 170 ſ. 4
6 Whether with or without conſent in this caſe, is not material; but penetration muſt be proved. *ibid.* ſ. 5
7 All aiders and aſſiſters, *preſent*, whether male or *female*, are principals. ſ. 6
8 How this offence was formerly puniſhed. ſ. 7
9 By 8 Eliz. c. 7. this offence is excluded from the benefit of clergy. *ibi.*

REALM.—*Vide Contempts*, No. 37, 38

REASON.—*Vide Madmen.*

REBELS.—*Vide Treaſon.*

1 Private perſons may arm and aſſemble to oppoſe and ſuppreſs rebels. 267, 268, 298

RECOGNIZANCES.—*Vide Public Houſes. Behaviour. Peace.*

RECORD.

1 The embezzling, defacing, or altering any record, is a high offence at common law, puniſhable with fine and impriſonment, 177
2 By 8 Hen. 6. c. 12. if any record or *proceeding* in the king's courts, be ſtolen, whereby any judgment ſhall be reverſed, the offenders, their aiders, &c. ſhall be guilty of felony. *ibid.*
3 The jury ſhall be equally impanneled from officers of any two of the courts in Weſtminſter Hall, to try the indictment. *ibid.*
4 The offence ſhall be tried either by the king's bench, or by the common pleas. *ibid.*
5 The above acts only extends to the exchequer, king's bench, and common pleas; and the chancery as far only as it proceeds according to the common law. *ibid.*
6 The judges are not within the act. *ib.*
7 But by 8 Rich. 2. c. 4. judges as well as clerks ſhall pay a fine for raſing rolls, &c. *Page* 177
8 Judges are puniſhable at common law for falſifying records. *ibid.*
9 Whether it is neceſſary that the alteration of the record ſhould occaſion a reverſal of the judgment. 178
10 If the offence be not compleated in one county, the offender cannot be indicted for the felony, but for the miſpriſion only. *ibid.*
11 Acceſſaries after are left to the general conſtruction of the law. *ibid.*
12 If the offence be committed in a different county from that in which either of the courts ſit, the court who tries muſt have a ſpecial commiſſion. *ibid.*
13 If committed in London the lord mayor ſhall not be included in the commiſſion. *ibid.*
14 By 21 Jac. 1. c. 26. it is felony without clergy, to acknowledge *a record*, &c. &c. in the name of another. 178 ſ. 9
15 The trial ſhall be in the county where the *perſonating* is committed. 178, 179
16 In perſonating bail, if the bail piece be not filed, it is no felony, but miſdemeanor only. 179
17 By 4 & 5 W. & M. c. 4. to perſonate another before commiſſioners authoriſed to take bail, is felony. *ibid.*
18 In what caſe a record may be avoided by an averment of uſury. 532 ſ. 20
19 *Nul tiel record* a good plea to maintenance 544
20 In what caſes the record of juſtices, for a riot may be traverſed. 299, 302
21 A record of forcible entry may be traverſed. 276

RECUSANT.—*Vide Papiſt.*

RE-DELIVERY.—*Vide Robbery*, No. 3

REGRATOR.—*Vide Engroſſing.*

RELIGION.—*Vide Church. Lord's Day. Præmunire. Hereſy.*

REPUGNANCY.

1 In what caſes it vitiates an indictment. *Page* 285, 286

RIOTERS.

1 The offence of BLACK MAIL, and how puniſhed. 201
2 Offences by MOSS TROOPERS, how puniſhed. *ibid.* ſ. 2
3 Clergy taken from felonious rioters in Cumberland and Northumberland. 202

RIOTS, ROUTS, and unlawful ASSEMBLIES.

1 A RIOT is a tumultuous diſturbance of the peace by three perſons or more, &c. &c. 392 c. 65
2 Force and violence in the proſecution of an *illegal* act, makes the offenders rioters. 294 ſ. 2
3 But to effect a *legal act*, even forcibly, by means of numbers, will not make the actors rioters. *ibid.*
4 Yet they are anſwerable for any *needleſs outrage*. *ibid.*
5 If numbers meet together innocently, as at a wake or fair, and a quarrel enſue, they are not rioters, but affrayers. *ibid.* ſ. 3
6 Otherwiſe if they had formed parties under the pledge of mutual aſſiſtance. *ibid.*
7 Eſpecially if the notice of their confederacy be for illegal purpoſes of a *private nature*, as pulling down bawdy houſes, &c. 295
8 And thoſe who join ſuch a confederacy, after it is once formed, are equally guilty. *ibid.*
9 The enterprize muſt be accompanied with ſome *offer* of violence, either to the perſon or poſſeſſion of another. *ibid.* ſ. 4
10 Therefore, riding armed, in a manner conducing to terror, is only an unlawful aſſembly, and not a riot. *Page* 295
11 But the ſhew of armour, threatening ſpeeches, turbulent geſtures, &c. are ſufficient *offers* of violence to maintain that the riot was *in terrorem populi*; for it muſt be ſo laid to be done. *ibid.* ſ. 5
12 But if *any number* aſſemble, without circumſtances of terror to do an act, under a *pretended* right, they are not rioters. 296
13 Nor to do an act contrary to the common law or ſtatute; as to celebrate maſs, &c. if they perform it peaceably, *ibid.*
14 If the object of an aſſembling be of a *public nature*, as to pull down *all* bawdy houſes, &c. ſuch rioters will be guilty of treaſon. ſ. 6
15 And *private* redreſs, even where authoriſed by law, muſt be executed in a *peaceable* manner, or the offenders, if to the number of three or more, will be rioters. ſ. 7
16 But, perhaps, the juſtice of ſuch a caſe, though riotouſly purſued, would mitigate the offence. *ibid.*
17 A ROUT, ſeems to be an unlawful aſſembling of perſons with *an intention*, and actually *moving* to do a thing, the execution of which would make them rioters. 296, 297
18 AN UNLAWFUL ASSEMBLY, is an aſſembling with circumſtances of terror, with or without an *intention* to do a riotous act; but neither *executing* it or making any *motion* towards it. 297 ſ. 9
19 For a man cannot *tumultuouſly* aſſemble even his friends for the defence of his *perſon*, as he may for the defence of his *houſe*; but he muſt ſeek his ſecurity by obtaining ſureties for the peace. ſ. 10
20 All peace *officers* may ſuppreſs a riot, and command the aſſiſtance of other perſons for that purpoſe. ſ. 11
21 And as private perſons may ſuppreſs an affray, *a fortiori*, they *may aſſiſt* and arm themſelves, to ſuppreſs a riot. 298

22 Riots which ſavour of rebellion, *they* may *certainly* interpoſe to ſuppreſs, for, on ſuch occaſions, no remedy can be too ſharp or ſevere. *Page* 298

23 By 1 Geo. 1. c. 5. if twelve perſons, riotouſly aſſembled, ſhall ſo continue together for one hour after proclamation, they may be apprehended by a peace-officer and carried before a magiſtrate; and if the rioter happen to be killed, the officer ſhall be diſcharged. ſ. 11.

24 Perſons not actually engaged, but only aiding, &c. are principals in the ſecond degree under this act. *Note in mar.*

25 But this ſtatute does not abridge the authority which either officers or private perſons have at common law. ſ. 11.

26 By the common law rioters may be puniſhed, according to the degree of the offence, by fine and impriſonment, pillory and forfeiture of lands. ſ. 12.

27 Corporators puniſhable in their natural capacity for ſuffering riots within their juriſdictions. ſ. 12

28 Women are puniſhable as rioters, but not infants wanting diſcretion. 299

29 By 34 Edw. 3. c. 1. *one* juſtice of the peace has authority over rioters; to reſtrain, arreſt, and chaſtiſe them. ſ. 15

30 He may authoriſe their arreſt *by parol*; and commit for not giving ſureties. ſ. 16

31 But *one* juſtice cannot by virtue of this act record a riot, or enquire of it after it is over; but he may by virtue of the ſtatute of Northampton (*vide p.* 266.) becauſe under the firſt he acts miniſterially, and under the ſecond judicially. ſ. 17

32 And where a juſtice is authorized to make a record, the fact he records is not traverſable. 300

33 By the common law, as a conſervator, and by 17 R. 2. c. 8. a juſtice may raiſe the *poſſe* to ſuppreſs a riot. ſ. 18

34 By 13 Hen. 4. c. 7. *two* juſtices with the ſheriff, may record a riot; and convict the offenders in the manner deſcribed by 34 Ed. 3. c. 1. (*Vide p.* 266. *Page* 300 ſ. 19

35 And for the purpoſe of ſuppreſſing the riot, they may raiſe the *poſſe*; which even noblemen are obliged to attend, who may arm themſelves with proper weapons. 301 ſ. 20

36 And this they may do, not only upon view, but information of the riot, and upon ſeeing any detached parties of the rioters; yet if they alarm the county frivolouſly, they ſhall be puniſhed. ſ. 22.

37 After view they may record the riot, although the rioters are in cuſtody, and upon freſh ſuit may retake any who ſhall eſcape;—but afterwards the record muſt be ſent to the king's bench, and proceſs to retake muſt thence iſſue—they may, however, at any time arreſt rioters to compel ſureties for behaviour. 302

38 If one bound by a recognizance of the peace, be included in the record of the riot, the production of it againſt him is concluſive. ſ. 25

39 But if the record contain a charge of felony, or maim, or reſcous; yet it is concluſive only as to the riot. ſ. 26

40 This record, being a conviction, ought to be certain and very circumſtantial; it ſhould ſhew that the parties are guilty, and how far guilty within the ſtatute; that the juſtices have purſued their power, &c. ſ. 27

41 How ſuch convicted rioters may be puniſhed. ſ. 28

42 By 13 Hen. 4. c 7. if the rioters are diſperſed before the two juſtices, ſheriff, or under-ſheriff, arrive, the juſtices (without the ſheriff p. 304 ſ. 33) may, within a month after, enquire, hear, and determine the offence according to law. 303 ſ. 29

43 By 19 Hen. 7. c. 13. the ſheriff, for this purpoſe, is directed to return a jury of 24 perſons, &c. who ſhall be fined for diſobedience. ſ. 30

44 It is not ſettled whether the power of the juſtices is confined to a lunar or calendar month. ſ. 31

45 But this authority extends to *all* the juſtices within the county; who may award

award process under their own teste, &c. *Page* 304 s. 34
46 It is questionable whether the justices can discharge rioters upon submitting to a fine, without imprisonment. s. 35
47 Formerly rioters might be fined both by the justices and by the *star chamber*. s. 36
48 By 13 Hen. 4. c. 7. the justices and sheriff may certify the record to the privy (*Vide* p. 306 s. 41.) council; which shall have the effect of a PRESENTMENT, and the offender may be tried thereon: but the certificate may be traversed and tried in king's bench, and if the offenders do not appear on proclamation, they shall be attainted of the riot. 305
49 Punishment and process against the jury, if they are guilty of maintenance, &c. s. 38
50 The certificate may be made by the justices who recorded the riot; but it is most proper to be made by those who took the enquiry. s. 39
51 And if they neglect so to do, they shall forfeit 20 *l.* *ibid.*
52 And the said certificate must be made within a month after the enquiry. 306 s. 40
53 And if the enquiry is obstructed, the certificate should contain the causes of the obstruction. *ibid.*
54 If there be any variance between the inquisition and the certificate, that which is most for the king's advantage, shall be preferred; but *qu.* if they differ only in the time. s. 42
55 And the certificate being in the nature of an indictment, it should be certain and circumstantial; but *qu.* if the addition of the offenders need be inserted. s. 43
56 And if the justices neglect to put 13 Hen. 7. c. 13. into execution, they shall forfeit 100 *l.* 307
57 But to incur this penalty the justices must live within the county, and if any justice execute the act, it excuses the rest. s. 45, 46
58 Only those who dwell nearest the riot, are liable, but if the nearest justice die, the next in vicinity is bound to execute the act; and if any others, on notice, of which the notoriety of the fact is sufficient, neglect to supply their default, they are fineable. *Page* 307 s. 47, 48, 49, 52
59 A partial execution of the act will not excuse from the penalty; but it is only in enormous riots, as rebellion or insurrections, that they are liable. s. 50, 51
60 No acquiescence of the parties will excuse the justices. s. 53
61 How rioters may be outlawed. 308
62 The penalties of the foregoing statutes found ineffectual, therefore by 1 Geo. 1. c. 5. if twelve or more, riotously assembled, do not disperse upon proclamation by the magistrate, but shall continue together for one hour afterwards, or shall hinder the magistrate from making the proclamation they shall be felons without benefit of clergy. 309 s. 56, 57
63 And if *any persons* riotously assembled shall demolish or begin to pull down any church, chapel, or any building for religious worship registered according to 1 W. & M. c. 18. or any dwelling-house, barn, stable, or other out-house, felony without clergy. s. 58
64 The inhabitants or hundred made liable. s. 59
65 By 9 Geo. 3. c. 29. the above penalties extended to the riotous demolition of mills. s. 60
66 By 13 Car. 2. c. 5. no petition shall be signed by more than 20 persons, &c. s. 61

RIDING ARMED.

1 By 2 Edw. 3. none, except the king's attendants, or officers and their assistants executing his precepts; or upon a cry of arms, shall appear armed before any justices; nor ride armed in fairs or markets on pain of forfeiting their armour and imprisonment. 266 s. 4
2 And all justices, magistrates, and peace officers are to execute this act upon pain of punishment by the judges of assize. *ibid.*

3 Proceedings may be either *ex officio* or by writ out of chancery, but a record of them ſhould be made and returned, if done *ex officio*, into the exchequer, if by writ, into chancery. *Page* 267 ſ. 5
4 Offenders may be impriſoned not only upon a view of the offence; but upon an inqueſt taken of it. *ibid.* ſ. 6
5 The under-ſheriff may execute the writ officially, except it be ſpecially directed. ſ. 7
6 None ſhall wear armour publickly upon pretence of protecting his perſon; but a man may aſſemble his neighbours to protect his houſe without incurring the penalties of the ſtatute. ſ. 8
7 But no wearing of arms is within the ſtatute unleſs they are ſuch as may terrify; therefore the weapons of faſhion as ſwords, &c. or privy coats of mail may be ſafely worn. ſ. 9
8 Neither are thoſe within the intention of it who arm for the purpoſe of ſuppreſſing, dangerous, tumultuous or noiſy inſurrections. 268 ſ. 10

RIVER.

1 It is a common nuiſance to divert part of a navigable river ſo as to weaken its current. 363
2 So alſo to lay timber in a public river ſo as to obſtruct its intercourſe, *ibid.* (N) 1
3 To place a floating dock in a public navigable river however beneficial to the repair of ſhipping is a nuiſance. *ibid.*
4 Who are bound to remove a nuiſance in an inland river. 365
5 A river, common to all men is called a highway. 366

ROBBERY.

1 Robbery is a felonious and violent taking away from the perſon of another, goods or money to any value, putting him in fear. 147 c. 34
2 Property obtained in conſequence of an oath extorted by fear is a ſufficient *taking* to ſatisfy the word *cepit*. *Page* 147 ſ. 1
3 Robbery once compleated cannot be purged by a re-delivery of the property taken; the reaſon of this rule of law. *ibid.* ſ. 2
4 An attack in order to rob, is only a miſdemeanour at common law. *ibid.* ſ. 3
5 But by 7 Geo. 2. c. 22. an aſſault with intent to rob is made ſingle felony. 148
6 By 23 Geo. 3. c. 88. any perſon apprehended with *implements* of robbery, with intention to commit the offence ſhall be deemed a rogue and vagabond. *ibid.*
7 If one of a *gang* only take the money yet his *confederates* are all equally guilty. *ibid.*
8 Confederates in robbery may be guilty, although they are not preſent when the property is taken. *ibid.*
9 Taking any thing from the care and protection of another openly and before his face, ſhall be conſidered as taking from his perſon. *ibid.*
10 This rule illuſtrated. *ibid.*
11 The fear muſt be excited before the property is taken, or the taking will amount to larceny only. *ibid.*
12 An actual aſſault with a weapon, is not neceſſary in order to excite the ſort of fear that will conſtitute robbery. 149
13 Nor need the fact of actual fear be either laid in the indictment or proved upon the trial. *ibid.* (N) 4
14 It is ſufficient if the offence be charged to be done *violenter et contra voluntatem*. *ibid.*
15 Proof of ſuch circumſtances as are *likely* to induce a man to part with money for the ſafety of his perſon, or preſervation of his character is ſufficient. *ibid.*
16 What acts will amount to *implied* fear. *ibid.*
17 *Quere* if it be robbery to force another to part with his goods at a fair price. 149 ſ. 7
18 The

18 The claim of property in the thing taken will not excuſe from the guilt of robbery. *Page* 149 ſ. 8
19 Robbery ſhall have judgment of death, how ſmall ſoever the value of the thing taken may be; but other larcenies muſt be above 12*d*. ſ. 9
20 Robbery, unlike all other larcenies, muſt be laid to be done violently, &c. 149, 150
21 By 23 Hen. 8. c. 8. principals and acceſſaries before in robbery *committed in or near about the highway*, are ouſted of clergy. 150
22 By 4 P. and M. c. 4. acceſſaries after are debarred. *ibid.*
23 By 3 & 4 W. & M. c. 9. robbery is ouſted generally. *ibid.*
24 But the words of 23 Hen. 8. are purſued in indictments. *ibid.*
25 By 4 W. & M. c. 8 thoſe who apprehend and convict robbers, are intitled to 40*l*. &c. &c. *ibid.*
26 By 6 Geo. 1. c. 21. the ſtreets of London are deemed highways within the 4 W. & M. *ibid.*
27 There is alſo a reward of 10*l*. for exonerating the hundred, &c. *ibid.*

ROPE-DANCING.—*Vide Nuiſance.*

RUMOURS.

1 Spreading of falſe rumours concerning the king's intentions, as that he intends to grant toleration to papiſts, &c. is a contempt of his perſon and government. 92
2 Spreading falſe rumours to inhance the price of victuals, &c. is highly criminal. 479

S.

SACRAMENT.

1 REVILING the ſacrament of the Lord's Supper with contemptuous words; how puniſhed. 13
2 The conſequence of not receiving it before and after the acceptance of an office. *Page* 15 to 17
3 The offence of popiſh recuſants not receiving it after conformity. 37, 38

SALT PETRE.

1 May be freely imported. 475

SATISFACTION.

1 The profits of a recuſant's lands ſhall go in ſatisfaction of the 20*l*. a month. 22

SCANDAL.—*Vide Libel. Conſpiracy.*

1 In malicious proſecution it is no excuſe for the defendant, that the indictment did import no manner of ſcandal. 348

SCIRE FACIAS.——*Vide Peace. Monopoly.*

SCOLD.

1 How an indictment againſt *a common ſcold*, as a *common nuiſance*, muſt be worded. 361
2 In what manner a common ſcold ſhall be puniſhed. 365

SCHOOL and SCHOOLMASTER.

1 By 23 Eliz. c. 1. every ſchoolmaſter who is not a proteſtant, ſhall be allowed by the biſhop, or forfeit 10*l*. a month, and ſuffer impriſonment for one year. 18
2 By 1 Jac. 1. c. 4. no perſon ſhall keep other than a public or free grammar ſchool, except in the univerſities, or in ſome proteſtant family, on pain of 40*s*. &c. *ibid.*
3 By 11 & 12 Will. 3. c. 4. perpetual impriſonment is inflicted on popiſh ſchoolmaſters not conforming to the 18 Geo. 3. c. 60. 46

4 Homicide by a ſchoolmaſter, in correcting his ſcholar, will be murder or manſlaughter, according to the propriety or impropriety of the mode of correction. *Page* 111
5 The aſſault of a ſchoolmaſter in chaſtiſing his ſcholar, is no forfeiture of a recognizance of the peace. 259
6 It is *præmunire* to contribute to the maintenance of a popiſh ſeminary. 81
7 The puniſhment inflicted on giving or receiving a popiſh education. (*Vide Papiſts.* 42, 43

SCRIPTURE.

1 By 9 & 10 Will. 3. c. 32. denying the ſcriptures to be of divine authority, creates diſability in law, &c. 7
2 Profane ſcoffing againſt the holy ſcriptures, is indictable at common law. 10
3 The king may grant the excluſive right to print the holy ſcriptures. 471

SEA.—*Vide Murder. Deodand. No.* 7. *Piracy.*

SEA BANKS.

1 By 22 Hen. 8. c. 11. to deſtroy the banks which ſecure the dykes in the counties of Norfolk and Cambridge, is felony. 198
2 By 10 Geo. 2. c. 32. *to remove* any of the piles or materials for ſecuring any ſea walls or banks, incurs a penalty of 20*l.* 199
3 The proviſions of the black act, 9 Geo. 2. c. 22. ſhall extend to all offences of deſtroying ſea banks, &c 200
4 By 6 Geo. 2. c. 37. maliciouſly *to deſtroy* any ſea bank, whereby any lands ſhall be damaged, is felony without clergy. *ibid.*
5 By 15 & 16 Geo. 2. c. 33. to deſtroy the *ſtarr*, or bent, planted on the Northweſt coaſts, for the purpoſe of ſupporting the ſea banks, incurs a penalty of 20*s.*

SEAL.—*Vide Treaſon.*

SELF-DEFENCE.—*Vide Manſlaughter.*

SELF-MURDER.—*Vide Felo de ſe.*

SEAMEN.—*Vide Curſing. Mariners.*

SECONDS.—*Vide Murder.*

1 Where the ſeconds to duellers are guilty of murder. *Page* 124

SE DEFENDENDO.—*Vide Excuſable. Homicide, No.* 1, 11, &c.

SEDITION.—*Vide Libels.*

1 Seditious conventicles may be ſuppreſſed. 6
2 Seditious words in derogation of the eſtabliſhed religion, are indictable, as tending to a breach of the peace. 10

SEDUCTION.

1 The bare ſolicitation of chaſtity is not an indictable offence. 357
2 But by 4 & 5 Ph. & M. c. 8. whoever ſhall unlawfully convey or take away any woman child unmarried within the age of ſixteen years by *trifling gifts, and fair promiſes*, ſhall be impriſoned two years, and fined at diſcretion. 172
3 A baſtard is within the protection of this act. 173 (N)

SEIZURE.—*Vide Smuggling. Papiſts. Deodand.*

SERVANTS.

1 Servants are not excuſed the commiſſion of any crime, whether capital

pital or not capital by the command or coercion of their master. *Page* 5
2 If a servant who *receives* goods from his master to carry to a customer, embezzils and converts them, on his way, he is guilty of felony. 135 (N)
3 A servant who has the care of the key of his master's chamber, is guilty of felony in stealing his property therefrom. 136
4 Servants who having the care of property, or access to it, who steal by means of the opportunity afforded by such care or access, are guilty of felony. *ibid.* (N)
5 By 21 Hen. 8. c. 7. servants stealing the money, jewels, &c. with which they *are intrusted*, shall be deemed felons. 138
6 Several determinations upon this statute. 138, 139
7 This offence ousted of clergy by 12 Ann. c. 7. 139
8 This act shall not extend to apprentices under 15 years of age. *ibid.*
9 By 15 Geo. 2. c. 13. servants of the bank of England, embezziling the property they are intrusted with, shall suffer death without benefit of clergy, *(vide Bank of England.)* 139, 140
10 By 5 Geo. 3. c. 25 and 7 Geo. 3. c. 50. servants of the post-office robbing any letter, &c. of the securities therein, are guilty of felony without clergy, *(vide post-office)*. 140
11 By 7 Jac. 1. c. 7. and 17 Geo. 3. c. 56 servants in the several trades therein mentioned, who embezil the materials delivered to them to manufacture, shall be punished by fine and imprisonment, &c. *ibid.*
12 A servant who opens his master's chamber door in the night to commit a felony, or who opens the house-door to let in a thief, is guilty of burglary. 164
13 By 33 Hen. 6. servants who spoil their master's goods, &c. at the time of his death may be proclaimed, and on not appearing may be attainted of felony. 197
14 By 6 Ann. c. 31. menial servants *negligently* setting fire to their masters house shall forfeit 100*l.* &c. 197
15 It is no forfeiture of a recognizance of the peace, &c. for a master to chastise his servant. *Page* 259
16 Nor for beating another in defence of his servant. *ibid.*
17 A servant is liable to such forfeiture for beating another in defence of his master's son. 260
18 A servant may not lay out his own money to *maintain* his master's suit. 541
19 Servants may lawfully defend their master. 128
20 If a servant kills his master, he is guilty of petty treason. 131

SESSIONS.—*Vide Highways. Public Houses. Bridges.*

SHEEP.—*Vide Cattle.*

1 By 8 Eliz. c. 3. to export rams, sheep, or lambs, incurs forfeiture for the first offence, a years imprisonment and the loss of the left hand for the second, and the third offence is felony. 195

SHEPHERD.

1 A shepherd who has the care of sheep, may be guilty of larceny by taking them feloniously away. 136 f. 6

SHERIFF.

1 A sheriff is punishable for persuading *a jury* to underprize goods in the execution of a *fieri facias*. 311
2 The duty and power of sheriffs to suppress riots. 302 to 307
3 In what cases he has power to raise the *posse commitatus*. 289, 294, 297, 300
4 Where he shall be deemed guilty of extortion. 310
5 In what case an under-sheriff may execute a writ directed to the sheriff. 267
6 I

6 If a ſheriff execute a man contrary to the judgment, he is guilty of felony. *Page* 106
7 In what caſes a ſheriff may juſtify homicide in the execution of his duty. 107, 108

SHIPS and SHIPWRECK.

1 By 12 Ann. c. 18. magiſtrates and officers, upon information of any ſhip being in diſtreſs ſhall appoint what aſſiſtance, &c. is neceſſary for her preſervation, and ſalvage of the goods. 219
2 Whoever refuſes or neglects this duty ſhall forfeit 100 *l.* *ibid.*
3 And if any other than ſuch as are appointed, ſhall interfere, they ſhall be reſiſted, &c. *ibid.*
4 If any goods be ſtolen, the perſon on whom they are found, ſhall forfeit treble the value. *ibid.*
5 And if any perſon ſhall make, or aſſiſt in making, any hole in any ſhip or veſſel in diſtreſs, or ſhall ſteal any pump from her, or aid in ſo doing, or ſhall do any thing tending to the immediate deſtruction of ſuch ſhip or veſſel, he ſhall be guilty of felony without benefit of clergy. 219, 220
6 By 26 Geo. 2. c. 19. whoever ſhall plunder the effects of ſhips in diſtreſs; or ſhall beat, &c. any perſon endeavouring to eſcape therefrom; or put out any falſe lights to deceive ſuch ſhip, ſhall ſuffer death without benefit of clergy. 220
7 But the offender may, if not guilty of violence and cruelty, be proſecuted for larceny only. *ibid.*
8 If any magiſtrate, officer, &c. ſhall be aſſaulted or wounded in endeavouring to ſave goods from ſhipwreck, he ſhall be tranſported for ſeven years. *ibid.*
9 If the offence be committed in Wales, it may be tried in the next adjoining Engliſh county. *ibid.*
10 *Salop* the next adjoining county to *Angleſea.* *ibid.* (N)
11 By 22 & 23 Car. 2. c. 11. and 1 Ann. c. 2. if any perſon ſhall willfully caſt away or deſtroy the ſhip to which he belongs to the prejudice of the owners or freighters, he ſhall ſuffer death without clergy. *Page* 185
12 If committed in the admiral's juriſdiction the offender may be tried as a pirate. *ibid.*
13 By 4 Geo. 1. c. 12. if this offence is committed to the prejudice of the underwriters, the offender ſhall *ſuffer death*, which by the 11 Geo. 1. c. 26. is explained to mean without benefit of clergy. 185, 186

SHOE-MAKER.—*Vide Lord's Day.*

SHOP.—*Vide Burglary. Larceny.*

1 By 10 & 11 W. 3. c. 23. whoever ſhall privately ſteal from any ſhop to the value of 5*s.* is guilty of felony without clergy. 151 (N)

SHOOTING AT ANOTHER.

1 By 9 Geo. 1. c. 22. if any perſon ſhall wilfully ſhoot at another, or ſhall reſcue an offender, &c. he ſhall ſuffer death without clergy. 225
2 Conſtructions upon this clauſe. *ibid.* (N)

SHROUD.

1 He who takes off a *ſhroud* from a dead corpſe may be indicted as having ſtolen it from him who was the owner thereof when it was put on. 145

SIGNS.

1 Libels may be either by words, pictures, or ſigns. 352
2 An inn-keeper ſhall be obliged to entertain his gueſt notwithſtanding he does not hang out a ſign. 452

SIGN MANUAL.—*Vide Treaſon.*

SILVER.—*Vide Coin. No.* 7, 8, 9, 12, 25.

SLANDER.—*Vide Libel. Contempts.*

SMUGGLING.

1 In what this offence conſiſts. *Page* 227

2 By 8 Geo. 1. c. 18. ſ. 6. whoever ſhall be found paſſing with contraband goods within 20 miles of the coaſt, with more than five perſons in company, or who ſhall be armed, or diſguiſed, or who ſhall reſiſt the revenue officers, &c. ſhall be guilty of felony and tranſported for ſeven years. *ibid.*

3 By 19 Geo. 2. c. 34. if three perſons or more armed with offenſive weapons, ſhall aſſemble to aſſiſt in the ſmuggling of goods, or in reſcuing them after ſeizure; or in reſcuing any offender againſt this act; or ſhall actually aſſiſt in ſo doing, ſhall be guilty of felony without clergy. 228

4 And if any *three* perſons ſo armed, ſhall be aiding, or if *any perſon* ſhall be diſguiſed when paſſing with contraband goods, or ſhall obſtruct (*Vide infra, No.* 14.) the revenue officers in ſeizing the ſame; or ſhall maim any officer in attempting to board any veſſel; or ſhall ſhoot at him when on board, it is felony without clergy. *ibid.*

5 What ſhall be conſidered an offenſive weapon within this act, is a fact for the determination of the jury. 227 (N) 1

6 The aſſembling (*Vide ſupra, No.* 3.) muſt be for the expreſs purpoſe of aſſiſting in the ſmuggling; perſons who ſuddenly join ſuch an aſſembly upon the alarm are not within this branch of the act. *ibid.* (N) 2

7 The branch of the act (*Vide ſupra, No.* 4.) has no regard to the number of perſons; an individual *with his face blacked*, &c. would *poſſibly* be deemed within the act. 228 (N) 3

8 On the branch for obſtructing (*Vide ſupra, No.* 4.) the proſecutor muſt give *circumſtantial evidence*, that the officers were revenue officers in the execution of their duty, and that the goods were *unaccuſtomed*. *Page* 228 (N) 4

9 Smugglers may be required, upon proclamation, to ſurrender themſelves, and upon neglecting ſo to do, they may be attainted of felony without clergy. 228, 229

10 Of the formalities previouſly neceſſary for this purpoſe. 229

11 How the market-towns, at which proclamation is to be made, ſhall be deſcribed in the ſuggeſtion. *ibid.* (N) *a*

12 To harbour a ſmuggler, to prevent his ſurrendering, is tranſportation ſeven years. 230

13 Several determinations which have been made upon this ſurrender clauſe. 230, 231

14 By 19 Geo. 3. c. 69. to obſtruct any revenue officer in ſeizing contraband goods; or to reſcue, or deſtroy, ſuch goods when ſeized, or to attempt ſo to do, is made a *miſdemeanor*.

15 By 24 Geo. 3. c. 47. maliciouſly to ſhoot at any revenue veſſel, or boat within any port, &c. or within four leagues of the coaſt; or maliciouſly to ſhoot, or maim, or dangerouſly wound, any officer of the navy or revenue, in the execution of their duty; or any perſons aiding ſuch officers, or to abet or aſſiſt therein, is felony without clergy. 221, 222

16 If an offender acts, *by firing a gun*, &c. under the *compulſion* of his captain, and from a well-grounded fear of the ſafety of his life, it is a ground of acquittal. *ibid. note in mar.*

SODOMY.

1 What it is, and how puniſhable 9, 10

SOLDIER.

1 By 2 & 3 Ann. c. 20. if any officer or ſoldier ſhall hold correſpondence with any rebel, or enemy, by letters, meſſages, &c. he ſhall be guilty of high treaſon. 70

2 To

2 To refuse to serve the king against invaders, or in his wars abroad, is a contempt of the prerogative. *Pa.* 91
3 By 39 Eliz. c. 17. soldiers wandering without, or with a forged testimonial, &c. &c. are guilty of felony without clergy. (VIDE MAIM.) 183
4 By 17 Geo. 2. c. 5. persons wandering and pretending to be soldiers, &c. shall be deemed rogues and vagabonds. 184
5 By 18 Hen. 6. c. 19. soldiers departing from their captains, without licence, shall be guilty of felony. *(obsolete)* *ibid.*
6 By 5 Hen. 7. c. 1. and 3 Hen. 8. c. 5. if any *common* soldier shall depart from his captain, without leave, during service, he shall be guilty of felony without benefit of clergy. 185
7 By 2 Ed. 6. c. 2. if any soldier shall desert during actual service, with booty, &c. he shall suffer without clergy. *ibid.*
8 By 29 Geo. 2. c. 17. whoever shall enter into the service of the French king, as an officer or soldier, shall be guilty of felony without clergy. 75 & *ibid* (N)
9 The statutes regulating the conduct of soldiers in the service of the East India Company. *ibid*
10 By 9 Geo. 2. c. 30. whoever shall enlist, or procure another to enlist as a soldier in the service of any foreign prince, without licence, shall suffer without clergy. 74
11 To enter into the Scotch Brigade, &c. incurs a penalty of 500*l.* *ibid.*
12 By 1 Geo. 1. c. 47. to persuade a soldier to desert, incurs a penalty of 40*l.* six months imprisonment, and pillory. 74
13 How soldiers convicted of profane cursing and swearing shall be punished. 12, 13

SON.--*Vide Maintenance. Petty Treason.*

1 A son is not excused the commission of a crime by the command or coercion of a father. 5

SON ASSAULT DEMESNE.--*Vide Assault, No. 9. Affrays. Contempt.*

SORCERY.—*Vide Witchcraft.*

1 Sorcerers are those who use certain superstitious forms of words, images, or odd representations to produce preternatural effects. *Page* 8

SOUTH-SEA BONDS.—*Vide Forgery. Personating.*

SPECIAL PLEADING.——*Vide Pleading. General Issue.*

SPECIAL SESSIONS.—*Vide Public Houses. Highways.*

SPIRITUOUS LIQUORS.—*Vide Public Houses.*

SPIRITUAL COURT.—*Vide Ecclesiastical.*

STARR.—*Vide Sea Bank.*

STABBING.—*Vide Manslaughter.*

SQUIBBS.—*Vide Burning.*

STAMPS.—*Vide Forgery. Felonies.*

1 It has been determined that the 23. Geo. 3. c. 49. and 23 Geo. 3. c. 58. which require bills of exchange, &c. to be stamped, make no alteration in the crime of forgery; and that a forged bill upon unstamped paper, is equally a forgery as if it had been stamped. *Rex.* v. *Hawkeswood*, 1783.

STATUTE.—*Vide Penal Statute.*

1 Where a ſtatute expreſſes that which the law would have implied, it ſhall operate nothing: *expreſſio eorum quæ tacite inſunt nihil operatur.* *Page* 20 ſ. 8. p. 26. ſ. 33

2 An affirmative ſtatute ſhall not abrogate any part of a former ſtatute with which it is conſiſtent. 26 ſ. 35, 37

3 An affirmative ſtatute ſaving a ſpecial juriſdiction, leaves the mode of proceeding therein unaltered. 14

4 Where a ſtatute makes no new offence, but only takes away a privilege, an indictment thereon need not conclude *contra formam ſtatuti*; and ſhall, if laid, be rejected as ſurpluſage. 116

5 Where the words of a ſtatute are not properly purſued the concluſion *con. for. ſtat.* will not cure the defect. 117

6 Where the meaning of a ſtatute is doubtful, the reaſon of the common law, ought to govern the conſtruction of it. 58 ſ 39

7 A ſtatute taking away clergy does not vary the nature of the offence. 151

8 A ſtatute beginning with inferiors ſhall not be extended to ſuperiors. 117

9 The miſchief complained of in the preamble of a ſtatute ſhall be conſidered in conſtruing the words of the enacting clauſe. 291

10 Statutes for the preſervation of the public peace ſhall receive a liberal conſtruction for the advancement of juſtice. 299

11 In what caſe a ſtatute ſhall be equitably conſtrued. 278

12 Judges are bound *ex officio* to take notice of a public ſtatute. 555

13 Where the body of a ſtatute refers to the preamble, the words of the preamble ought to be purſued. 172

14 Where a ſtatute inflicts judgment of *life and member*, the offence is thereby incidentally made felony. 68

15 But felony ſhall not be inferred where the words of a ſtatute are doubtful. *ibid.*

16 Where a ſtatute makes a ſecond offence felony, or inflicts an additional puniſhment, a conviction for the firſt is always implied. *Page* 168

17 The conſequences of a ſtatute creating a felony. 169

18 Where a ſtatute ſaves corruption of blood, it impliedly ſaves the deſcent of land, dower, &c. *ibid.*

19 If a ſtatute creating a felony be repealed after the offence is committed, the offender cannot be puniſhed as a felon. *ibid.*

20 The ſame rules of conſtruction ſhall prevail reſpecting acceſſaries by ſtatute, as at common law. 132, 169

21 Whether a ſtatute making an office *void*, may not be conſtrued to make it only *voidable*. 17

STATUTE MERCHANT.—*Vide Forgery.* No. 42.

STEALING.—*Vide Larceny.*

STOCKS.—*Vide Forgery. Perſonating.*

STOLEN GOODS.

1 By 3 W. & M. c. 9. and 5 Ann. c. 31. buyers or receivers of ſtolen goods ſhall be deemed acceſſaries after the fact. 232

2 By 4 Geo. 1. c. 11. they ſhall be tranſported for 14 years. *ibid.*

3 *Quere*, if *money* is within the meaning of the word *goods*, &c. *ibid.* (N) 1

4 By 2 Geo. 2. c. 25. *bank notes* are made *goods* within the meaning of the act. *ibid.*

5 *Sheep and rams* are *goods and chattels* within the act. *ibid.*

6 The *bare* receiving of ſtolen goods *knowingly* makes not an acceſſary, unleſs they are alſo *feloniouſly* received. *ibid.*

7 By 29 Geo. 2. c. 30. whoever ſhall buy or receive ſtolen lead, iron, copper, braſs, bell metal, or ſolder—or ſhall privately take them in at any door,

door, window-ſhutter, &c. left open after ſun-ſet, ſhall be tranſported for 14 years, *although the principal felon is not convicted.* *Page* 232, 233

8 If one juſtice upon the oath of credible *perſons* have cauſe to ſuſpect that ſuch ſtolen articles are in the poſſeſſion of any one, he may iſſue a warrant to bring him before two juſtices of the county, and if he do not give a ſatisfactory account how he came by them, he ſhall be fined, &c. 233

9 Officers may ſtop perſons whom they may ſuſpect to be carrying ſuch articles, and take them before the juſtices. *ibid.*

10 In what manner ſtolen goods *ſo* reclaimed, ſhall be diſpoſed of. 233, 234

11 Private perſons to whom ſuch articles are offered muſt apprehend the offenders. 234

12 How the penalties ſhall be applied and laid. *ibid.*

13 By 2 Geo. 3. c. 28. whoever ſhall buy or receive any part of the cargo or property belonging to any veſſel in the river Thames, or privately receive the ſame clandeſtinely, ſhall be tranſported 14 years, *although the principal felon is not convicted.* 234, 235

14 By 10 Geo. 3. c. 48. buyers or receivers of ſtolen jewels, plate, or watches, obtained by burglary or robbery ſhall be triable before as well as after the principal, whether he be in or out of cuſtody, and tranſported 14 years. *ibid.*

15 By 21 Geo. 3. c. 69. buyers or receivers of ſtolen pewter, may be tried in the ſame manner and tranſported 7 years, or confined not leſs than one nor more than three years, and be three times publicly whipped. *ib.*

16 By 22 Geo. 3. c. 58. whoever ſhall buy or receive any ſtolen goods, except lead, iron, copper, braſs, bell metal or ſolder, may be tried for *the miſdemeanor*, whether the principal may be amenable to juſtice or not, unleſs the principal is then convicted, &c. and puniſhed by fine, impriſonment and whipping as the court ſhall direct. 236

17 Juſtices on information or ſuſpicion may apprehend and convict, &c. &c. (*vide ſupra, No.* 8, 9, 10.) *Page* 236, 237

18 By 4 Geo. 1. c. 11. to take a reward upon pretence of helping a perſon to his ſtolen goods, involves the offender in the ſame guilt as if he were the actual thief. 237

19 By 25 Geo. 2. c. 36. to adverti ſe a reward for the reſtoration of ſtolen goods incurs a penalty of 50*l.* *ibid.*

20 By 9 Geo. 2. c. 25. to pretend *by crafty ſcience* to diſcover ſtolen goods incurs one years impriſonment, pillory four times, and ſurety at diſcretion. 9

STORES.—*Vide Naval Stores.*

1 The puniſhment for deſtroying the king's ſtores. 75, 76

STROKE.—*Vide Murder. Affrays. Contempt.*

SUICIDE.—*Vide Felo de ſe.*

SUBORNATION.—*Vide Perjury.*

SUNDAY.—*Vide Lord's Day.*

SUPERSEDEAS.

1 In what caſes a warrant for ſurety of the peace may be *ſuperſeded.* 256

2 How a reſtitution on an indictment of forcible entry may be *ſuperſeded.* 292

SUPPLICAVIT.—*Vide Peace.*

SUPREMACY.—*Vide Oaths. Lawyer. Treaſon. Papiſt. Præmunire.*

SURETY.—*Vide Behaviour. Peace.*

SURGEON.—*Vide Phyſic.*

SURVEYORS.—*Vide Highways.*

SWANS.—*Vide Larceny.*

1 In what caſes it is felony to ſteal them or their eggs. *Page* 144

SWEARING.—*Vide Curſing.*

T.

TAKING.—*Vide Larceny. Robbery.*

TAIL.

1 LANDS in tail not forfeited by the general words of a ſtatute. 85

2 How far the land of an heir in tail may be ſeized for the recuſancy of the anceſtor. 30, 31

TAVERN.—*Vide Innkeeper. Monopolies.*

TAX.—*Vide Aſſeſſment. Bridges.*

TENANT, TENEMENT, and TENURE.

1 How far *a tenant* may maintain his lord. 540

2 The word *tenement* too uncertain in an indictment of forcible entry. 283

3 How far perſons are bound *by tenure* to repair highways and bridges. 369, 422, 443

TERROR.—*Forcible Entry. Affray. Robbery.*

TEST.

1 By the teſt act 25 Car. 2. c. 2. all officers civil and military, except thoſe of inheritance, &c. &c. ſhall take the oaths of allegiance and ſupremacy and *teſt*, &c. *Page* 16, 17

THEFTBOTE.—*Vide Stolen Goods, No.* 18, 19.

1 Theftbote is nearly allied to miſpriſion of felony. 252

2 It is where one not only knows of a felony, but takes his goods again or other amends not to proſecute. *ibid.*

3 But it is no offence unleſs ſome favour be ſhewn to the thief. *ibid.*

THIEF.—*Vide Larceny.*

THREATS.—*Vide Words.*

THREATNING LETTERS.—*Vide Letters.*

TILTING.—*Vide Murder.*

TIME.—*Vide Computation.*

TIPPLING.—*Vide Public Houſes.*

TITLE.—*Vide Contempts. Pretended Title.*

1 In what manner contempts againſt the king's title ſhall be puniſhed, and in what they conſiſt. 93 to 98

2 For the offence of buying or ſelling a pretended title. 553 to 558

3 By 6 Ann. c. 7. to affirm that the pretender hath any title to the crown, or that any other hath title than according to the ſettlement of 1 W. & M. c. 2. and 12 W. c. 2. is *præmunire*. *Page* 84

TIMBER.—*Vide Trees.*

TOKEN.—*Vide Cheats. Deceits.*

TOLERATION.—*Vide Diſſenter.*

1 By the toleration act 1 W. & M. c. 18. all perſons diſſenting from the church, except papiſts, and thoſe who deny the Trinity, are exempted from all penal laws relating to religion, other than 25 Car. 2. c. 2. and 30 Car. 2. c. 1. 47

2 Diſſenting teachers are tolerated if they take the oaths enjoined by 1 W. & M. and 19 Geo. 3. c. 44. and ſubſcribe the 39 articles, except thoſe relating to church government and infant baptiſm. 48

3 In what manner the toleration act ſhall be conſtrued. 49 ſ. 2

TOLLS.—*Vide Turnpike Roads.*

TONGUE.—*Vide Maim.*

TRANSPORTATION.

1 A deſcription of the offenders liable to tranſportation *to America*. 244

2 By 4 Geo. 1. c. 11. if any ſuch offenders ſhall return before the expiration of his term, he ſhall be guilty of felony without clergy. *ibid.*

3 In what caſe the priſon-book ſhall be evidence to prove the diſcharge of a priſoner under a conditional pardon to tranſport himſelf within a given time from the day of his diſcharge. *ibid.* (N) 1

4 It has been determined that an act of parliament ordering tranſportation generally always means tranſportation to *America*. *Page* 144 (N) 2

5 By 6 Geo. 1. c. 23. if any felon *ordered* for tranſportation ſhall *be at large* before the expiration of his term he ſhall ſuffer death without clergy. 245 ſ. 2

6 If an offender confeſs the fact the court will record his confeſſion. *ibid.* (N) 3

7 To prove the offence the record of his conviction muſt be produced; the averments in the indictment muſt be correſpondent, and evidence muſt be given of the priſoner's identity. *ib.*

8 In what manner ſuch offender may be tried, and the record of his former conviction certified to the court. 245 ſ. 3

9 By 16 Geo. 2. c. 15. if any felon who has agreed to tranſport himſelf *to America*, ſhall be afterwards at large in Great Britain without lawful cauſe, he ſhall ſuffer without benefit of clergy. *ibid.* ſ. 4

10 By 8 Geo. 3. c. 15. if felons who have been reprieved and afterwards pardoned in the manner the act directs upon conviction of tranſportation ſhall be afterwards at large, &c. &c. they ſhall ſuffer without benefit of clergy. 246 ſ. 5

11 The caſe of *Maximilian Miller* ſtated. *ibid.* (N) 4

12 By 19 Geo. 3. c. 74. on account of the emancipation of the American colonies, convicts are ordered to be tranſported to ſuch parts beyond the ſeas, as the court ſhall think fit. 246 ſ. 6

13 And if they return they ſhall be ſubject to the penalties inflicted by the acts above-mentioned. 247 ſ. 7

14 The caſe of *John Henry Aickles* ſtated. *ibid.* (N) 3

15 Male offenders ordered to labour on board the hulks in lieu of tranſportation. 248

16 If any perſon ordered to hard labour ſhall eſcape before the expiration of his term, he ſhall ſuffer three years additional impriſonment, and for a ſecond eſcape felony, without clergy. *ibid.* ſ. 10

17 The

17 The penitentiary houſes for the confinement of female offenders never carried into execution. *Pa.* 248 ſ. 10
18 By 24 Geo. 3. c. 56. offenders liable to be tranſported by the ſtatutes abovementioned, ſhall be tranſported to ſuch places as his majeſty, by the advice of his council ſhall think fit. 248, 249
19 And if any convict ſo tranſported, ſhall be found at large, &c. &c. he ſhall ſuffer death without benefit of clergy. 249 ſ. 12
20 By 25 Geo. 2. c. 46. the laws of tranſportation are extended to Scotland 249, 250
21 By 27 Geo. 3. c. 2. convicts are ordered to be tranſported to Botany Bay. *Vide Book the ſecond page.* 514

TRANSUBSTANTIATION.

1 By 12 Ann. c. 14. the ordinary may tender the declaration againſt tranſubſtantiation to any reputed papiſt making a preſentation, and upon refuſal the preſentation ſhall be void. 45 ſ. 7
2 By 30 Car. 2. c. 1. members of both houſes of parliament are bound to make a declaration againſt tranſubſtantiation. 47
3 By 1 Geo. 1. c. 2. all perſons who bear any office ſhall *(inter alia)* ſubſcribe againſt tranſubſtantiation. 16

TRAVERSE.

1 In what caſe the attorney general may take a *traverſe* upon a *traverſe*. 444 ſ. 5
2 How preſentments in a court leet are traverſable. 415, 420
3 A juſtice's record of a riot, in what caſes not traverſable. 300, 302
4 A record of a forcible entry not traverſable 275, 276
5 Whoever has power to try the principal matter may alſo try a traverſe of any incidental matter neceſſary for the determination of it. 276, 290 to 293, 304
6 How an indictment of forcible entry is to be traverſed, and what is to be done on ſuch traverſe. *Page* 293, &c.
7 In what caſes an inqueſt of ſelf-murder is traverſable. 104

TREASON.—*Vide Petty Treaſon.*

1 Treaſon is of two kinds; high treaſon and petty treaſon. 49, 131
2 By 33 Hen. 8. c. 20. repealed by 1 & 2 P. & M. c. 10. it was enacted that a madman might be puniſhed as a traitor. 2
3 A wife ſhall not be deemed guilty of treaſon for receiving her huſband who has committed it. 4
4 But if a wife join in or do the act of treaſon, no pleas of coverture or coercion ſhall extenuate her guilt. *ibid.*
5 High treaſon was anciently a crime of a very indefinite and unſettled deſcription: inſtances given. 49 ſ. 1
6 But by 25 Ed. 3. c. 2. reinforced by 1 M. c. 1. all treaſons are ſettled; and ſo remain, except thoſe created ſince 1 Mary *(vide infra. No.* 72.) 49 ſ. 2
7 By 25 Ed. 3. c. 2. to compaſs or imagine the death of the king, queen, or heir—to violate the king's wife, his eldeſt daughter, unmarried, or the wife of his heir—to levy war againſt the king, or to adhere to his enemies in his realm, giving them aid and comfort—on attainder by *open deed*, is high treaſon. 50
8 *All perſons* of the age of diſcretion, and of ſane memory, may be guilty of treaſon. *ibid.*
9 The ſubject of a foreign prince, while reſident in England, may be guilty of treaſon. The manner of laying the charge in the indictment. *ibid.* ſ. 5
10 Even an ambaſſador, for treaſon againſt *the life of majeſty*, may be condemned and executed here. 51
11 But for *other treaſons* he ſhall be ſent home. *ibid.*
12 How the charge may be laid. *ibid.*
13 Aliens

13 Aliens who invade the kingdom cannot be tried *as traitors*, they muſt be dealt with by *martial law*. *Page* 51 ſ. 6

14 If an alien, reſident here, ſhould during war, go to his native country and there adhere to the king's enemies, *leaving family and effects in England*, he may be dealt with as a traitor.—*Foſter* 185. *ibid.*

15 A natural born ſubject cannot renounce his allegiance; no time or circumſtance can prevent his treachery from being puniſhed. 51 ſ. 7

16 The fact of killing the king may be laid in the indictment as an overt act of compaſſing his death. *ibid.* ſ. 8

17 An enumeration of circumſtances which are conſidered to amount to overt acts of compaſſing the king's death. *ibid.* ſ. 9

18 But the guilt commences only when *ſome meaſure* is *taken* to effectuate the guilty purpoſe. *ibid.* (N) 1

19 Every thing wilfully and deliberately deſigned, or attempted to be done, whereby the life of majeſty may be endangered, is an overt act of compaſſing his death. *ibid.*

20 But an accident, however fatal, ſhall not be conſidered as an overt act of guilt, even in high treaſon. 51 ſ. 10

21 Every king *in poſſeſſion* of the throne, but no other, not even the rightful ſovereign, is a king within the protection of the ſtatute of treaſons—the reaſons of it. 52

22 The hiſtory of the diſtinction between a king *de jure*, and *de facto*. *ibid.*

23 Allegiance is ſo indiſpenſibly the right of a king *de facto*, that ſubjects are bound by it to reſiſt a king *de jure* only. *ibid.*

24 The abſurdity of conſidering the murderers of Charles the firſt, as traitors to Charles the ſecond, while he was *out of poſſeſſion* and the reſiſtance of him as a king *de jure*, reconciled, by an *ex poſt facto* vote, that he was a king *de facto* though *out of poſſeſſion*. 53

25 Upon the death of a king in actual poſſeſſion, his heir is a king, within the ſtatute before his coronation. *ibid.* ſ. 19

26 It is a maxim that the king never dies. *Page* 53 ſ. 19

27 A *titular* king, as the huſband of a *queen regnant*, is not within the ſtatute. 53 ſ. 20

28 A *queen regnant*, though not within the words, is *a king* within the meaning of the act. *ibid.*

29 By 1 Will. & Mar. c. 2. papiſts and thoſe who marry a papiſt are excluded from the throne; and, if they attain it, the people are abſolved from their allegiance. *ibid.* ſ. 21

30 No queen or princeſs dowager is within the ſtatute of treaſons. *ibid.* ſ. 22

31 A *queen conſort*, or the wife of the prince, conſenting to an adulterer, are traitors within the act. *ibid.*

32 The ſon of a queen regnant is a prince and heir within the act. *ibid.*

33 A queen divorced *a vinculo*, &c. is not within the act. *ibid.* (N) 2

34 Nor the wife of a king's ſecond ſon. *ibid.*

35 It is not treaſon to violate the king's eldeſt daughter who hath been married. *ibid.*

36 *Quære* whether a collateral heir apparent be within the ſtatute unleſs ſo declared by parliament. *ibid.*

37 In a forcible manner to reſiſt the king's authority is a levying war againſt him. 54

38 To hold a caſtle againſt his forces, or to ſupport armed numbers againſt his command is a levying of war. *ibid.* ſ. 24

39 But thoſe who join rebels for fear of death, and eſcape from them when opportunity offers are not traitors. *ibid.*

40 The kind of fear, and the extent of the conſtraint which is neceſſary to form this excuſe, and whether it is to be ſtrictly conſtrued. *ibid.* (N) 3

41 The degree of force and practicability of eſcaping, are facts for the conſideration of the jury. *ibid.*

42 How far an inſurrection to redreſs a public grievance ſhall be conſidered high treaſon. 54 ſ. 25

43 An attempt by intimidation and violence to force the repeal of a law is a levy-

a levying of war againſt the king. *Page* 54 (N) 4
44 An inſurrection to remove a grievance in which the inſurgents have a ſpecial intereſt is not a levying of war. 55
45 How coadjutors in treaſon ſhall be conſtrued within the guilt of the principal offender upon a ſpecial verdict. *ibid.* f. 26
46 Thoſe who are found in a ſpecial verdict to have ſuddenly joined the inſurgents, and to have flung up their caps and hollowed with them, are only guilty of riot. *ibid.*
47 A conſpiracy to levy war cannot amount to treaſon. f. 27
48 But a conſpiracy may be alledged as an overt act of compaſſing the king's death. *ibid.*
49 There may be a levying of war without actual fighting. *ibid.*
50 By the expired acts of 13 Eliz. and 13 Car. 2. *conſpiracies* to levy war was declared high treaſon. *ibid.* (N) 5
51 Any aſſiſtance given to aliens in open hoſtility againſt the king; as ſurrendering a caſtle, ſelling arms, cruiſing with a ſhip, is *an adherence to the king's enemies.* 55 f. 28
52 It is not neceſſary to alledge that ſuch adherence was againſt the king. *ibid.*
53 But the ſpecial manner of adherence muſt be ſet forth. *ibid.*
54 Succouring *a rebel* in a foreign realm, is not an adherence to the king's *enemies*; for a rebel is not properly an enemy. *ibid.*
55 It is neceſſary to aver that the perſons adhered to were the king's enemies; a fact which may be evidenced by its public notoriety. 55 (N) 6
56 Proclamation of war not always neceſſary. *ibid.*
57 Some overt act muſt be alledged in every indictment of treaſon. 56
58 What may be alledged as overt acts of compaſſing the king's death. 56 f. 30, 31 and (N) 7
59 Written words has been holden to be an overt act of compaſſing the king's death. 56 f. 32
60 The great queſtion examined whether words only ſpoken can amount to an overt act. 57 to 61
61 Words joined to an act may explain it. *Page* 57 f. 37
62 Bare words are not overt acts of treaſon unleſs uttered in contemplation of ſome traiterous purpoſe actually on foot, or intended, and in proſecution of it. 60 (N) 11
63 By 25 Edw. 3. c. 2. if a man ſlay the chancellor, treaſurer, or the judges in the execution of their offices, it is high treaſon. 60, 61
64 This branch of the act ſhall not be extended to other officers than thoſe expreſsly named, nor to any attempt to kill or actual wounding, unleſs death enſue. 61 f. 47
65 Neither the barons of the exchequer, nor commiſſioners of the great ſeal are within it. *ibid.* (N) 12
66 By 7 Ann. c. 21. to ſlay the juſticiary or lords of ſeſſion in Scotland, in the execution of their office, is high treaſon. *ibid.*
67 By 25 Edw. 3. c. 2. to counterfeit the king's great or privy ſeal is high treaſon. 61 f. 48
68 Aiders and conſenters are within this clauſe. f. 49
69 No intent to do it will amount to treaſon. f. 50
70 Fixing the great ſeal to a patent without a warrant ſo to do, is not high treaſon. f. 51
71 No abuſe in miſuſing the impreſſion of the great ſeal; nor any alteration of the inſtrument to which it is affixed, will amount to a counterfeiting of it. f. 52
72 By 1 Mar. c. 6. counterfeiting the ſign manual or privy ſignet is high treaſon. f. 53
73 By 7 Ann. c. 21. to counterfeit the ſeals uſed in Scotland is high treaſon. f. 53
74 By 25 Edw. 3. c. 2. to counterfeit the king's money--to bring falſe money into the realm, like the money of England, is high treaſon. f. 54
75 To coin money without the king's authority, is high treaſon within this clauſe. 62 f. 55
76 Minters making money of improper *alloy* are guilty of high treaſon. *ibid.*
77 Receivers

77 Receivers and comforters of the offender are principals. *Page* 62
78 In the counterfeited money muſt be ſimilitude and probable currency or the crime is uncompleat. (N) 13
79 To *utter* falſe money made within the realm is not within the act, (*vide infra*, No.) 62 ſ. 56
80 By 1 M. c. 6. to counterfeit foreign gold or ſilver coin, made current in the realm, or to aid therein, is high treaſon. 62 ſ. 59
81 By 14 Eliz. c. 3. to counterfeit foreign gold or ſilver coin, not made current, is miſpriſion of treaſon. ſ 60
82 By 5 Eliz. c. 11. to waſh, clip, round, or file, for *gain*, either Engliſh or foreign coin, made current by proclamation, or to aid therein, is high treaſon. 63 ſ. 61
83 By 18 Eliz. c. 1. to impair, diminiſh, falſify, ſcale, or lighten ſuch monies, or to aid therein, is high treaſon, but without corruption of blood. ſ. 62
84 By 8 & 9 W. 3. c. 26. to make or mend any inſtrument or utenſil therein named, which will impreſs the reſemblance of the coin, &c. &c. —or to make any edging tool to grain the edges of money—or any preſs for coinage—or any engine for cutting blanks—or to have ſuch inſtrument, &c. in cuſtody, &c. is high treaſon. 64
85 By 7 Ann. c. 25. the proſecution muſt be within ſix months. *ibid.*
86 By 8 & 9 W. 3. c. 26. to convey any coining inſtrument out of the mint—to mark coin on the edges—to diminiſh the coin, or to aid in ſo doing, is high treaſon. *ibid.*
87 By 8 & 9 W. 3. c. 26. to colour, gild, caſe over, or work any round blanks of baſe metal, to reſemble the current coin, &c. or to make the ſilver coin reſemble the gold, or to aid therein, is high treaſon. *ibid.*
88 To extract a colour from the ſubſtance of the metal, by chemical proceſs, is a *colouring* within the meaning of this clauſe. *ibid.* (N) 16
89 The tools or inſtruments for coining found in the cuſtody of an offender, may be ſeized and deſtroyed. 65
90 By 15 Geo. 2. c. 28. to waſh, gild, or colour any of the ſilver coin, ſo as to make it reſemble the gold coin—or to file, alter, waſh, or colour, any of the braſs monies, ſo as to reſemble the ſilver coin of ſixpences or ſhillings, or to counſel or aid therein, is high treaſon. *Page* 65 ſ. 64
91 There muſt be a ſimilitude, a reſemblance of the true money counterfeited, or the crime is incomplete. (N) 17
92 By 1 & 2 Ph. & M. c. 11. to bring into the realm, money counterfeited according to the ſimilitude of foreign coin current here, is high treaſon. 65 ſ. 65
93 It muſt be known to be falſe. ſ. 66
94 It muſt be brought from ſome country where counterfeiting is not puniſhable by the laws of England. ſ. 67
95 Barely uttering ſuch money, is not high treaſon. 66
96 By 25 Ed. 3. c. 2. if any new caſe, neceſſary to be conſidered as high treaſon, ſhould ariſe, the judges ſhall not give judgment of treaſon upon it, except it has been previouſly declared to be treaſon by act of parliament. 66 ſ. 70
97 How treaſons were made by virtue of this clauſe, but by 1 Mary, no offence ſhall be high treaſon, not ſo declared to be by 25 Ed 3. ſ. 71
98 By 5 Eliz. c. 1. by writing, or adviſed ſpeaking, to extol or maintain the juriſdiction of THE POPE, is *præmunire* for the firſt offence, and high treaſon for the ſecond. 69 ſ. 72
99 Knowingly to import, commend, or recommend a book, though written beyond ſea, which maintains this juriſdiction is within the ſtatute, &c. &c. ſ. 73
100 To avow the ſame opinion after a firſt conviction, is high treaſon ſ. 74
101 By 13 Eliz. c. 2. to put in uſe any popiſh bull, or inſtrument of abſolution, or to purchaſe any ſuch, is high treaſon. ſ. 75
102 Acceſſaries after the offence incur *præmunire*. *ibid.*
103 Concealing the offence for ſix weeks, is *miſpriſion of treaſon*. *ibid.*
104 By

104 By 23 Eliz. c. 1. and 3 Jac. 1. c. 4. to become perverted to popery, or to pervert, or endeavour, to pervert others to that religion, &c. is high treaſon. *Page* 68 ſ. 76
105 By 3 Jac. 1. c. 4. if any ſuch offender, beyond ſeas, return in ſix weeks, and take the oaths, &c. he is excuſed. ſ. 77
106 The barely pretending to have power to perſuade perſons from their allegiance, is within theſe acts. ſ. 78
107 By 27 Eliz. c. 2. if any Engliſh eccleſiaſtic, ordained a popiſh prieſt, ſhall remain in the realm, and not ſubmit to a juſtice within three days, he ſhall be guilty of high treaſon. ſ. 79
108 If any lay ſubject ſhall not return from a popiſh ſeminary, within ſix months after proclamation, and ſubmit within two days after his return, he ſhall be guilty of high treaſon. ſ. 80
109 To conceal that a popiſh prieſt is in the realm, from a juſtice for twelve days, is fine and impriſonment at diſcretion; if a juſtice ſhall not diſcover it to the privy council within twenty-eight days, he ſhall forfeit 200 marks. ſ. 81
110 An indictment upon the clauſe No. 107, muſt ſhew that the offender was born in the realm, and that he was ordained by papal authority. ſ. 82
111 Such an offender, thrown by winds upon the Engliſh coaſt, in his paſſage to Ireland, is not within the act. 69
112 By 5 Eliz. c. 1. if any perſon performing the duty, or enjoying the preferment of the Romiſh church, ſhall refuſe a ſecond tender of the oaths, it is high treaſon. 69 ſ. 84
113 By 4 Ann. c. 8. & 6 Ann. c. 7. to maintain by *writing*, that the pretender, or any other, hath a right to the crown, other than according to 1 W. & M. c. 2. or 11 and 12 W. 3. c. 2. or that parliament cannot limit the deſcent of the crown, is high treaſon. ſ. 85
114 To affirm the ſame by *adviſed ſpeaking*, is *præmunire*. *ibid.*
115 By 1 Ann. c. 7. endeavouring adviſedly and directly to hinder any perſon who ſhall be next in ſucceſſion, according to 1 W. & M. c. 2. and 12 W. 3. c. 2. is high treaſon. *Page* 85
116 By 13 W. 3. c. 3. the pretender is convicted and attainted of high treaſon. ſ. 86
117 By 13 W. 3. c. 3. and 17 Geo. 2. c. 39. if any ſubject of England ſhall hold any correſpondence with the pretender, or with the ſon or ſons of the pretender, or any perſon employed by them, it is high treaſon. 69, 70
118 By 2 & 3 Ann. c. 20. if any officer or ſoldier ſhall hold correſpondence with any rebel or enemy, by any ways or means whatſoever, without authority, it is high treaſon. 70 ſ. 87

TREASURE TROVE.

1 He who takes away *treaſure trove* before it has been ſeized by the perſons who have a right thereto, is not guilty of felony, but ſhall be only puniſhed by fine, &c. 144

TREES.

1 Trees, being affixed to the freehold, could not become the ſubject of larceny at common law. 141 ſ. 21
2 By 43 Eliz. c. 7. to ſteal or deſtroy any trees, which it is not felony at common law to ſteal, is puniſhable by compenſation at diſcretion, and by public whipping. 214
3 In a conviction on this act the number and nature of the trees muſt be ſet out. *ibid.* (N)
4 The manner in which the offence was committed muſt alſo be ſtated. *ibid.*
5 A gentleman who is guilty within this act, is liable to the penalties. *ibid.*
6 By 15 Car. 2. c. 2. the houſes of ſuſpected offenders may be ſearched. 214
7 By 1 Geo. 1. c. 48. to deſtroy any timber, fruit, or other tree, on conviction by two juſtices, is hard labour three months, to be whipped once a month, and find ſurety for two years. *ibid.* ſ. 2

8 The party grieved may recover damages againſt the pariſh. *Page* 214 ſ. 2
9 This act gives no *pecuniary* penalty, the conviction therefore ſhould be *quod foris faciat*, or *quod committitur*, &c. *ibid.* (N)
10 By 6 Geo: 1. c. 16. to ſteal or deſtroy any tops of trees, poles, or underwoods, &c. &c. is puniſhable according to 1 Geo. 1. c. 48. 215 ſ. 3
11 By 6 Geo. 3. c. 36. and 13 Geo. 3. c. 33. to ſteal or deſtroy, *in the night*, any oak, beech, aſh, elm, fir, cheſnut, aſp, poplar, alder, maple, larch, or hornbeam, *timber tree*, is tranſportation for ſeven years. 215 ſ. 5
12 By 6 Geo. 3. c. 48. to deſtroy any timber tree, or any tree likely to become timber, or the lops or tops thereof, incurs a penalty of 20 *l.* with coſts and charges, for the firſt offence; 30 *l.* for the ſecond; and for the third, tranſportation. 215, 216
13 The coſts and charges muſt be definitely aſcertained in the conviction, or it may be quaſhed. 216 (N)
14 *Qu.* whether the juſtices of peace have not a power to tranſport for the third offence. *ibid.*
15 By 6 Geo. 3. c. 48. to go into the grounds of another, and cut or ſpoil any ſticks of wood, or green ſtubbs, &c. or to have the ſame in cuſtody unſatisfactorily, incurs a penalty of 1ſt, 40 *s.* 2dly, 5 *l.* and 3dly, the offender ſhall be deemed an incorrigible rogue. 216, 217
16 To obſtruct the apprehending an offender forfeits 10 *l.* 217
17 By 9 Geo. 3. c. 41. the clauſe No. 15. is extended to his majeſty's foreſts and chaces. *ibid.* ſ. 9
18 By 4 Geo. 3. c. 31. keepers may ſeize the implements for deſtroying ſuch green ſtubbs, &c. to their own uſe. *ibid.*
19 By 29 Geo. 2. c. 36. to deſtroy trees in waſte grounds, incurs the puniſhment of 6 Geo. 1. c. 16. (*vide ſupra, No.* 10. ſ. 10
20 By 9 Geo. 1. c. 22. to deſtoy trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or to reſcue an offender; or to induce any other to join in ſuch offence, is felony without clergy. *Page* 215 ſ. 4
21 By 13 Edw. 1. ſt. 2. no tree ſhall ſtand within a certain diſtance of the highway, which is likely to become a concealment or harbour for robbers. 382 ſ. 26
22 Trees whoſe branches incommode the highway, may be lopped by any perſon, if the owner neglects. 405
23 By 13 Geo. 3. c. 78. the owners of trees near the highway, except trees planted for ornament or ſhelter, &c. are made liable to a penalty for not cutting them. 405, 406
24 In what caſes ſurveyors may cut down trees ſtanding in any highway. 407

TRESPASS.

1 In what caſes treſpaſſers on the Northern borders are guilty of felony. 200, 201
2 How far the alteration of a man's property will make him liable to a treſpaſs for re-taking it. 139
3 Force is implied in every treſpaſs. 160

Vide Highways.—Bridges.—Peace. Affrays.—Park.

TRIAL.—*Vide Murder.—Piracy.—Record.—Jury.*

TRINITY.

1 By 9 & 10 W. 3. c. 32. if any Chriſtian ſhall deny any one of the perſons of the Holy Trinity to be God; or maintain there are more gods than one; or deny the truth of chriſtianity, or the divine authority of the holy ſcriptures, he ſhall be diſabled to ſue, &c. or bear any offices, &c. and be impriſoned three years. 7
2 Thoſe who deny the Trinity are denied the benefit of the toleration act. 47

TRUST.

TRUST.

1 How far a truſt eſtate is liable to be ſeized for recuſancy *Page* 22
2 Lands ſettled in truſt for the repair of the highways in what manner, and under whoſe directions they are to be managed and employed. 381, 382
3 By 1 W. & M. c. 26. if the truſtee, &c. of any avoidance whereof the truſt ſhall be for a papiſt ſhall preſent without giving notice to the univerſity he ſhall forfeit 100*l.* 33, 34
4 By 12 Ann. c. 14. no truſtee to a papiſt ſhall preſent to any benefice, &c. or the univerſities ſhall preſent. 44, 45
5 By 11 Geo. 2. c. 17. every grant of a benefice, &c. by a truſtee to a papiſt is void, unleſs granted for a valuable conſideration to a proteſtant purchaſer, who ſhall diſcover, &c. as a popiſh truſtee. *ibid.*

TRUTH.

1 In perjury it is not material whether the fact which is ſworn, be in itſelf true or falſe, it is ſufficient that the ſwearer did not know it to be true. 322, 323
2 It is no juſtification of a libel that the contents of it are true. 353
3 The reaſon why in a libel truth is no juſtification. 353, 354 (N)

TURKIES.

1 It is larceny to ſteal them. 144

TURNIPS.

1 Not larceny at common law to ſteal them growing. 141
2 By 13 Geo. 3. c. 23. to ſteal or deſtroy turnips growing, incurs a penalty of 10*l.* &c. 217

TURNPIKE GATES.

1 By 1 Geo. 2. c. 19. to deſtroy any public turnpike gate, or the rails or fences thereto belonging, ſubjects the offender to hard labour for three months, and to be publicly whipped. *Page* 192, 193
2 By 5 Geo. 2. c. 33. on conviction at the aſſizes, the offender may be tranſported for ſeven years, and if he commit the offence a ſecond time, or ſhall demoliſh any *turnpike houſe*, he ſhall be guilty of felony. 193 ſ. 5
3 In both caſes the proſecution muſt be within ſix months. *ibid.*
4 If ſuch convict return from tranſportation it is death. ſ. 6
5 By 8 Geo. 2. c. 20. whoever ſhall be guilty of the above offences, or deſtroy any chain, &c. placed to prevent perſons from paſſing without paying toll, or ſhall reſcue any offender, he ſhall ſuffer death without clergy. ſ. 7
6 By 13 Geo. 3. c. 84. if any perſon ſhall commit any of the offences aforeſaid; or ſhall deſtroy any crane or machine for weighing carriages, &c. he ſhall be tranſported for 7 years, or committed to priſon not exceeding three years at the diſcretion of the court. ſ. 8
7 In all the caſes above mentioned the hundred ſhall make ſatisfaction. *ibid.*

TURNPIKE ROADS.

1 They are under the direction of TRUSTEES. *ibid.*
2 Who muſt poſſeſs *realty* of 40*l.* a year, or 800*l.* *perſonally*, or be heir apparent to *realty* of 80*l.* a year. 424
3 And take the oaths directed by 13 Geo. 3. c. 84. before two juſtices. *ibid.*
4 Or they are liable to a penalty of 50*l.* *ibid.*
5 And it is incumbent on the truſtee to prove his qualification. *ibid.*
6 No publican ſhall be a truſtee, or act under them. ſ. 2
7 But a publican may farm the tolls. *ibid.*
8 Acting as a truſtee is evidence of being one. *ibid.*

9 Where the day of meeting has elapſed any five truſtees may appoint a meeting of the whole body, on giving 20 days notice. *Page* 425
10 No meeting ſhall be adjourned longer than three months, and all buſineſs done between ten in the morning and two P. M. ſ. 4
11 If they exceed their power in erecting gates, the juſtices may order the gates to be removed. ſ. 5
12 Truſtees may adminiſter oaths ſ. 6
13 Seven truſtees may farm out the tolls by auction, upon one month's notice for that purpoſe, and deſcribing the particular tolls to be let, and ſpecifying their produce the preceding year. 426
14 The method in which the bidding at ſuch auction ſhall be conducted. ſ. 8
15 If the farmer of the tolls ſhall take more than the regular rates, he ſhall forfeit 5*l.* and gate keepers ſo doing ſhall forfeit 40*s.* ſ. 9
16 But ſeven truſtees, upon a month's notice, may reduce or advance the tolls as they ſhall ſee convenient. ſ. 10
17 If the toll is mortaged, then ſuch an alteration requires the conſent of four fifths of the creditors. 427
18 Five truſtees may direct proſecution for nuiſance, at the expence of the road, provided they can prove the fact. ſ. 11
19 Two truſtees may ſupply the vacancy of toll keeper. ſ. 12
20 The truſtees may agree for proportion of repairs with thoſe who are bound by reaſon of tenure, incloſure, &c. ſ. 13
21 They ſhall hang up tables of the rates of toll, and of the different weights, and number of horſes which carriages are allowed to carry or be drawn with. ſ. 14
22 They ſhall erect mile-ſtones, direction poſts, flood poſts, &c. &c. (*vide* p. 396.) ſ. 15
23 WEIGHING ENGINES. 428 ſ. 16
24 Five truſtees may order weighing engines to be erected at as many gates within their juriſdiction as they ſhall ſee proper. *ibid.*
25 No ſide gate to be erected unleſs by a majority of nine truſtees, on 21 days notice, and no toll for paſſing only 100 yards through the ſame, unleſs over ſome expenſive bridge. *Page* 428
26 The different burthens which carriages are allowed. 429
27 The additional toll which thoſe carriages are to pay for extra weight. ſ. 18
28 Any truſtee, officer, or creditor may cauſe carriages, not paſſed above 300 yards through any gate, to return and be weighed upon tendering the driver 1*s.* which ſhall be refunded if the weight is found exceſſive. 430
29 If the toll keeper neglects to weigh *ſuſpected* carriages, or to receive the additional toll, he ſhall forfeit 5*l.* ſ. 20
30 The truſtees ſhall make places within 300 yards of every gate for carriages to turn. *ibid.*
31 A liſt of the truſtees, creditors, clerk, treaſurer, and ſurveyor ſhall be hung in the houſe of every gate where there is a weighing engine to be inſpected by drivers. *ibid.*
32 If the driver refuſes to return, he forfeits 40*s.* and any peace officer may drive the carriage back to be weighed. *ibid.*
33 No carriage employed in huſbandry or in carrying manure ſhall be weighed. ſ. 21
34 The quarter-ſeſſions, upon complaint, may order weighing engines to be erected. ſ. 22
35 Where too roads meet, the truſtees may agree to erect one weighing engine for the accommodation of both. 431 ſ. 23
36 No compoſition to be made for tolls, unleſs the carriages have felloes ſix inches broad. ſ. 24
37 The penalty for endeavouring to evade the tolls by unloading goods, &c. before the carriage arrives at the weighing engine. ſ. 25
38 The penalty for endeavouring to avoid the weighing engine. ſ. 26
39 As to CARRIAGES, 432 ſ. 27

40 The number of horſes with which carriages are allowed to be drawn according to the breadths of their fellies and the penalties. *Page* 432 ſ. 27
41 Two oxen equal to one horſe. *ibid.* 4
42 Carriages to have names and deſcriptions. 5
43 Carriage rolling 16 inches may be drawn with any number of horſes and ſhall only pay half tolls. ſ. 28
44 No proſecution for penalties unleſs information be made of the offence within three days. ſ. 29
45 The penalty for taking off horſes or altering the diſtance of the wheels to avoid the toll. 433
46 The truſtees may allow a ſufficient number of horſes up hills, riſing more than four inches in a yard ſ. 31
47 A juſtice on the oath of one witneſs may ſtop proſecution for penalties in drawing with a greater number of horſes than are allowed, if it appear neceſſary by reaſon of deep ſnow, &c. (*vide* p. 411.) *ibid.*
48 Poſts to be placed where additional horſes are allowed. *ibid.*
49 No carriages with leſs than nine inch fellies ſhall be drawn by horſes in pairs, except ſuch as having ſix inch fellies ſhall be permitted by ſeven truſtees, and except carriages drawn by two horſes only. 434
50 Juſtices in Wales may licence an increaſed number of horſes ſ. 33
51 Any perſon may apprehend the driver of a carriage not marked or drawn by a greater number of horſes, &c. ſ. 34
52 Extraordinary high tolls for particular roads may be reduced. ſ. 35
53 EXEMPTION FROM TOLL. 434 ſ. 36
54 Carriages rolling 16 inches only to pay half the toll of carriages with fellies of ſix inches. *ibid.*
55 No chaiſe marine, coach, landau, berlin, chaiſe, chair, calaſh, or hearſe, nor any royal artillery or ammunition carriage, nor any cart drawn by one horſe or two oxen
56 Nor any carriage of nine inch fellies carrying one block of ſtone, or piece of timber ſhall be ſubject to the above tolls. *Page* 434 ſ. 37
57 Perſons taking fraudulent advantage of theſe exemptions, ſhall forfeit between 5*l.* and 40*s.* ſ. 38
58 No toll ſhall be taken for any horſes of ſoldiers or officers on their march or no duty, nor for any baggage waggons, nor ſhall ſuch carriages be weighed at any engine. ſ. 39
59 But no exemption ſhall be taken by carriages carrying *any particular* kind of goods, unleſs they have fellies of ſix inches, and except carriages carrying corn, or grain in ſtraw, hay, ſtraw, fodder, manure, dung or lime. ſ. 40
60 And no exemption ſhall be taken by carriages of ſix inch fellies, unleſs the tire of ſuch fellies lie flat; and thoſe only which ſhall not deviate more than one inch from a flat ſurface ſhall be taken to be flat. 436
61 No toll ſhall be taken for carriages working the repair of highways or turnpike roads. ſ. 42
62 The MAIL COACHES are exempted from toll. ſ. 43
63 AS TO STATUTE DUTY. 436 ſ. 44
64 The ſurveyors ſhall ſee that the duty required by the ſeveral particular turnpike acts is done, and that the compoſitions ariſing therefrom are applied to the repair of the reſpective roads on penalty of 40*s.* *ibid.*
65 When two truſt roads lie in the ſame pariſh, and the duty ſhall exceed three days, the juſtices ſhall apportion the ſhares of duty to be borne by each pariſh. *ibid*
66 MATERIALS FOR REPAIRS. ſ. 45
67 No ſurveyor ſhall gather horſes without the conſent of the owners of the land, or licence from a juſtice, after ſuch owner ſhall have been ſummoned and refuſed to appear. 437
68 Satisfaction ſhall be made for materials. (398) *ibid.* ſ. 46
Materials may be contracted for, but no ſurveyor ſhall have any ſhare therein (p. 403.) ſ. 47
69 NUSANCES. 437 ſ. 48
70 If

70 If the overſeer of any turnpike road ſhall ſuffer any *nuſance* (as deſcribed) to remain for four days within ten feet, on either ſide of the middle of ſuch road, he ſhall forfeit 40*s*. *Page* 437 ſ. 48

71 SUBSCRIBERS and MORTGAGEES. ſ. 49

72 Subſcribers who ſhall ſign any writing, to advance money, ſhall be bound by their ſubſcription, and on default, the treaſurer, on notice, may ſue for the ſame *ibid.*

73 Mortgagees of the tolls ſhall account, on oath, for all the monies which ſhall ſo come to their hands, after fourteen days notice from five truſtees, for that purpoſe, or forfeit 10*l*. 429 ſ. 50

74 The penalty for a mortgagee holding over, after his money is repaid. ſ. 51

75 OFFICERS OF TURNPIKE ROADS. ſ. 52

76 If a diſcharged gatekeeper refuſes to deliver up the toll-houſe. &c. within four days after notice of the new appointment, any juſtice may order him to be removed, and put the new toll-keeper in poſſeſſion. *ibid.*

77 Gate-keepers and toll-gatherers, on notice for that purpoſe, from any five truſtees, ſhall account for all the monies they have received upon penalty of 5*l*. 430

78 No perſon reſiding in any toll-houſe ſhall be removeable as a *pauper*, unleſs chargeable; nor ſhall he thereby gain a ſettlement, or be aſſeſſed to any public or parochial levy. ſ. 54

79 Gate-keepers permitting horſes or carriages, otherwiſe than as allowed, or without the names, inſcriptions, &c. thereon, ſhall forfeit 40*s*. ſ. 55

80 All officers, their executors and adminiſtrators ſhall, within ten days after notice by five truſtees, deliver up all books, &c. &c. upon pain of 20*l*. ſ. 56

81 Treaſurers and ſurveyors ſhall give bond for the faithful diſcharge of their duty; but the exemption of ſuch bonds from ſtamps is repealed. ſ. 57

82 Officers who ſhall neglect to put this act (13 Geo. 3. c. 84.) into execution, ſhall forfeit 10*l*. *P.* 440 ſ. 58

83 Juſtices may act notwithſtanding they are creditors. ſ. 59

84 Puniſhment of ſuch as ſhall reſiſt or make forcible oppoſition to any thing directed by this act. ſ. 60

85 REPAIRING ALTERED ROADS. 440 ſ. 61.

86 The inhabitants or perſons who were liable to repair any old road, ſhall continue liable to repair any new road which may be made in lieu of the old one. *ibid.*

87 If the parties cannot agree in what proportion they are liable to repair, it ſhall be ſettled by two juſtices. 442

88 And for which proportion a groſs or annual ſum may be fixed to be paid with the conſent of the parties, at a veſtry for that purpoſe. *ibid.*

89 Where turnpike roads are indicted, the court may ſettle the proportion of the fine and the coſts between the inhabitants and the truſtees ſ. 62

90 But not ſo as to endanger the ſecurity of the creditors. *ibid.*

91 How far the powers of the HIGHWAY ACT may be adopted with reſpect to TURNPIKE ROADS. ſ. 63

92 In what caſes the highway and turnpik acts are ſimilar. 442 ſ. 64

93 Informations for penalties, in order to favour an offender, are fraudulent and void. ſ. 80

U. V.

VACATING RECORDS—*Vide Records.*

VAGABONDS—*Vide Vagrants, No.* 3, 4, 5, 11, &c.

VAGRANTS.

BY 17 Geo. 2. c. 5. all who threaten to abandon their family to the pariſh, or who return after removal

val without certificate, or who refuse to work, or beg within their parishes, are IDLE AND DISORDERLY PERSONS. *Page* 569, 570

2 Such offenders may be committed for a month. 570

3 Any person may apprehend such beggars, and if they escape they shall be punished as rogues and vagabonds. s. 3

4 Patent gatherers, bearwards, players, minstrels, jugglers, gypsies, fortune-tellers, gamblers, absconders, unlicensed pedlars, wanderers, and beggars, shall be deemed ROGUES AND VAGABONDS. *ibid.* s. 4

5 Also by 23 Geo. 3. c. 88. whoever shall be apprehended with any instrument, engine, utensil, or other offensive weapon, with intent to commit robbery, or house-breaking, shall be deemed a ROGUE AND VAGABOND. 148, 165

6 By 17 Geo. 2. c. 5. convicted end gatherers, and rogues and vagabonds who are refractory, or have escaped, or shall become rogues and vagabonds a second time, shall be deemed INCORRIGIBLE ROGUES. 571

7 Any person *may* apprehend an offender, but if charged so to do by a justice, he *must*, or forfeit 10*s*. *ibid.* s. 6

8 Two justices in each district shall meet four times a year, in order to direct a *privy search* within his jurisdiction. *ibid.* s. 7

9 The justice shall enquire, as well of the person apprehended as of others, the last place of legal settlement, and to commit the examination to the quarter sessions. 571 s. 8

10 The vagrant shall be publickly whipped and committed, or be conveyed by *a pass*, &c. &c. a duplicate of which shall be filed at the sessions. *ibid.*

11 If the session shall adjudge a vagrant so committed, a rogue and vagabond, or incorrigible rogue, they may send him to hard labour for six months, and such incorrigible rogue for any further time less than two years. 572

12 If above twelve years of age, and a male, they may send him to sea, &c. *Page* 572

13 If such incorrigible rogue shall break gaol, or shall offend a second time, he shall be transported for seven years. *ibid.*

14 By 13 & 14 Car. 1. c. 22. the sessions may transport such vagrants as shall be adjudged incorrigible. 572 s. 10

15 By 17 Geo. 2. c. 5. if any child, above seven years of age, of any vagrant, should be committed, the sessions may place it out as an apprentice; and if the vagrant be found wandering with the same child, he or she shall be an incorrigible rogue. 572 s. 11

16 Convicted vagrants, who cannot be conveyed, &c. may be placed out as servants, &c. s. 12

17 The justices shall express, in a certificate to be given to the officer with the pass, the particular manner in which the vagrant shall be conveyed. s. 13

18 The manner in which vagrants shall be passed from one place to another, till they reach their destination. 572, 573

19 Vagrants may be searced and their property appropriated to defray the expence of their conveyance. 573 s. 18

20 The duty of the constables, &c. in respect to the conveying of vagrants, s. 16

21 By 26 Geo. 2. c. 34. if the high constable is deficient in funds to discharge the expence of conveyance, it shall be paid by the treasurer. 573, 574

22 By 17 Geo. 2. c. 5. to alter the certificate, (*Vide Supra No.* 17) incurs a penalty of 50*l*. and not to deliver or receive a vagrant, incurs, pursuant to the directions of it, 20*l*. *ibid.* s. 18

23 The parish to which a vagrant is conveyed shall set him to work, and on refusing, he shall be committed by a justice to hard labour. s. 19

24 The vagrant may be re-examined by *a* juſtice of the pariſh to which he is conveyed, and committed as *incorrigible*.—But no vagrant ſhall be *removed* but by *two* juſtices. *Page* 573, 574 ſ. 20

25 But it has been decided, that the pariſh to which a vagrant is *ſent* by a paſs, cannot appeal from it to the juſtices.—*R.* v. *Ringwould.* 574 (N)

26 The manner by which *Scottiſh vagrants*, ſhall be paſſed to the place of their laſt legal ſettlement. 574 ſ. 2

27 And if any ſuch vagrant be afterwards found wandering, he ſhall be deemed incorrigible. 574

28 How *Iriſh vagrants* ſhall be conveyed to their native kingdom. 575

29 The authority of juſtices to ſecure and convey lunatic vagrants, &c. 2 & 575 ſ. 23

30 Whoever ſhall harbour a vagrant, without giving notice to the conſtable, ſhall forfeit from 10*s.* to 40*s.* 576 ſ. 24

31 Any female vagrant delivered of a child, chargeable to the pariſh, may be detained by the officers, conveyed before a juſtice, examined, committed till the ſeſſions, and then confined for ſix months, &c. *ibid.* ſ. 25

32 The juſtices ſhall order the pariſh to be reimburſed. *ibid.*

33 If the child be *a baſtard*, it ſhall not gain ſettlement by its birth, but the ſettlement of the mother ſhall be that of the child.

34 The charges of apprehending, &c. &c. to be paid out of the county rate. *ibid.* (N)

35 To neglect any of the directions of this act, incurs a penalty from 20*s.* to 5*l.* *ibid.*

VALUE.—*Vide Robbery. Larceny.*

VEGETABLES.

1 By 13 Geo. 3. c. 32. to ſteal or deſtroy any *turnips, potatoes, cabbages, parſnips, peas, or carrots*, growing, incurs a penalty of 10*l.* *Page* 217

VENUE.

1 In an information for uſury, *the place* were the corrupt bargain was made muſt be expreſsly ſet forth. 533

2 Uſury in one county pleaded in bar to a bond in another county, ſhall be tried where the uſury is alleged. *ibid.*

3 An offence which conſiſts in *nonfeaſance*, need not be alleged in any certain place. 22

VERDICT.

1 Where impoſſible matter, found in a verdict, ſhall be rejected. 116 ſ. 9

VICTUALS and VICTUALLER.

1 An inſurrection to bring down the price of victuals, *is ſaid* to be *a conſtructive* levying of war againſt the king, and may be laid as an overt act of high treaſon in compaſſing his death, *qu.* 54

2 *Merchant ſtrangers* may ſell imported victuals in the groſs. 479

3 By 23 Edw. 3. c. 6. all dealers in any kind of victuals ſhall ſell for reaſonable profits, and the chief officers of towns ſhall ſee they do ſo on pain of treble value of the thing exorbitantly ſold. 480

4 How butchers ſelling unwholeſome meat ſhall be puniſhed. *ibid.*

5 By 4 Hen. 7. c. 3. no beaſts ſhall be killed in walled towns. *ibid.*

6 By 21 Hen. 8. c. 8. calves ſhall be killed at certain times only. *ibid.*

7 By 1 Jac. 1. c. 22. no calves ſhall be killed under five weeks old. *ibid.*

8 By 22 Hen. 8. c. 6. butchers ſhall not keep tan houſes. *ibid.*

9 Whether they may ſell to one another. *ibid.*

10 *Aliens amie* may diſpoſe of their victuals. ſ. 7 & 8

11 By 25 Hen. 8. c. 2. the lord chancellor, &c. may ſet the prices upon victuals. *Page* 481
12 This ſhall not reſtrain officers of cities, &c. having authority to ſet the prices of victuals. *ibid.*
13 By 2 & 3 Edw. 6. c. 15. if any butchers, brewers, bakers, poulterers, cooks, coſters, or fruiterers, ſhall *conſpire* to raiſe the price of victuals, &c. they ſhall forfeit, &c. *ibid.*
14 By 2 Geo. 3. c. 14. no brewer, innkeeper, victualler, ſhall be ſued for advancing the price of ſtrong beer and ale in a reaſonable degree. 482

Vide engroſſing, Corn, Bread, Beer, Butter, Cheeſe, Cattle, Fiſh, Bacon, Hay, Fruit, Honey.

VI ET ARMIS.

1. The words *vi et armis* ſhall be implied in an indictment for forcible entry, *manu forti.* 287 ſ. 44
2 An indictment for ſtopping a highway in a man's own ground is good without the words *vi et armis.* 422 ſ. 92
3 In *ſcire facias* on a recognizance for the peace *contra pacem* are ſufficient without *vi et armis.* 258 ſ. 19

VIEW.—*Vide Highways,* No. 153 *Public Houſes, Riots, Traverſe.*

VILLEIN.

1 It was no felony, by the common law to ſteal a *villein* 142

VILLAINOUS JUDGMENT.

1 It is a puniſhment inflicted by the common law. 351 ſ. 9.
2 It was formerly inflicted for conſpiracy. *ibid.*
3 It is now obſolete; no inſtance of it ſince Edw. 3d. *Page* 352

VIOLATION—*Vide Treaſon, Murder.*

VIOLENCE.—*Vide Robbery, Riots. Forcible Entry,*

UNDER-WOOD.

1 The puniſhment for ſtealing it. 214

UNIVERSITIES.—*Vide Papiſts. Public Houſes. Preachers. Books.*

UNLICENSED HOUSE—*Vide Public Houſes. Bawdy Houſes.*

1 Houſes of *public entertainment* within 20 miles of London, deemed diſorderly, unleſs licenſed 358
2 The form of the licence. *ibid.* ſ. 3
3 Houſes ſo licenſed, to be diſtinguiſhed by AN INSCRIPTION. *ibid.* ſ. 4.
4 How offenders may be puniſhed. 359

U S U R Y.

1 Is a contract upon a loan of money, to give the lender a certain profit for the uſe of it at all events. 527 ſ. 1
2 Or in a larger ſenſe, it is all undue advantages taken by a lender againſt a borrower. ſ. 2
3 But an agreement to pay double the ſum borrowed, on non-payment of the principal on a certain day is not uſurious, for the borrower may diſcharge himſelf by performing it. ſ. 3
4 The ancient notion of uſury. ſ. 4 to 7
5 By 12 Ann. c. 16. no perſon upon any contract ſhall take more than 5 *per cent.* for any loan; and all bonds, contracts, and aſſurances for the repayment of the principal, &c. ſhall be void. ſ. 8

Though

6 Though the reſervation be of ſo much "if requeſted," and the requeſt be never made. *Page* 527 ſ. 8. in in notes.
7 And whoever upon any contract ſhall take, by way of corrupt loan, or intereſt by anydeceitful wayabove the rate of 5 *per cent. per ann.* ſhall forfeit treble the value. 529
8 *Note*, The treble value is not forfeited unleſs more than the legal rate be taken; but the very contract alone avoids the ſecurity. *ibid.* (N) 1
9 By 12 Ann. whoever ſhall take for brokage more than 5*s.* for procuring the loan of 100*l.* &c. ſhall forfeit 20*l.* ſ. 9
10 A contract made before the ſtatute is not within it. ſ. 10
11 A bond for a juſt debt with lawful intereſt ſhall not be affected by a corrupt agreement between the obligors to which the obligee is not privy. ſ. 11
12 But a bill of exchange given on an uſurious contract is void in the hands of an innocent indorſee even without notice of the uſury. 530 (N) 2
13 A ſubſequent uſury made upon a precedent contract, ſubjects the party to the treble value, but does not avoid the fair ſecurity. ſ. 12
14 Yet *quære* if the party *take* more than legal intereſt. (N)
15 The computation of intereſt ſhall be by calendar and not by lunar months. ſ. 13
16 But intereſt paid before it is due will not make the party liable to treble value unleſs it be corrupt. ſ. 14
17 An annuity above the legal rate of intereſt is not uſurious except it be a *colour* for uſury. ſ. 15
18 No contract is uſurious by which the lender runs the hazard of loſing all his money, both principal and intereſt. ſ. 16
19 But if the intereſt only be hazarded, and the principal ſecure, the whole may be uſurious. *ibid*
20 So a loan upon a contingency, where the party *may* receive above 5 *per cent* without the riſk of receiving leſs is within the ſtatute 12 Ann. *ibid*
21 If the contingency goes to affect the intereſt only, it is uſurious. *Page* 530 (N) 3
22 If the contingency relates to both principal and intereſt, and above 5 *per cent.* be taken, the court will enquire whether it be colourable or not. *ibid.*
23 But where above 5 *per cent.* obtained by means of exchanging goods, *if a credit given for them*, it is not uſury. *ibid.*
24 Unleſs it is a *colourable* ſcheme, for it is the intent which ſhall determine whether it be a loan or riſk. *ibid.*
25 And where above 5 *per cent.* is taken, if the ſubſtance of the contract be a borrowing and a lending, a ſlight colourable contingency only will not take it out of the ſtatute. *ibid.*
26 Uſury ſhall not be imputed from any miſtake in drawing up the agreement. ſ. 17
27 No expectation of more than legal intereſt, if there be no kind of agreement relating to it, ſhall be conſtrued uſurious. 532 ſ. 18
28 Nor is the reſervation of more than 5 per *cent.* upon the non-payment of the principal, at the end of the year uſurious—unleſs it appears there was an agreement that the principal ſhould not then be paid. ſ. 19
29 If the uſurious tranſaction is for a *loan of money*, &c. &c. no ſhift or colour whatever ſhall evade the ſtatute. (N) 4
30 If a man *borrows* under colour of buying, it may be uſurious. *ibid.*
31 But if goods are ſold, to be paid for in three months, or to allow the ſeller ſuch an additional profit as exceeds 5 *per cent.* it is not uſury. *ibid.*
32 A fine levied or judgment ſuffered may be avoided by an averment of a corrupt agreement, as well as any ſpecial or parol contract. ſ. 20
33 And in aſſumpſit if it *appear* uſurious, the plaintiff cannot recover—but to a ſpecialty the uſury muſt be *pleaded*. *ibid.*
34 The court may direct an iſſue to try the uſury. (N)

35 It is not neceſſary that the principal and intereſt ſhould be ſecured by the ſame writing. *Page* 532 ſ. 21
36 Nor is it neceſſary that the uſury be in the name of intereſt. 533 ſ. 22
37 A ſecond bond given for the amount of a forfeited penalty on a former bond is uſurious. ſ. 23
38 In pleading uſury in bar to *an action* the whole muſt be ſpecially ſet forth —but in an *information* on the ſtatute the corrupt bargain may be ſtated generally. ſ. 24
39 And in ſuch information, the place where, and the time when the bargain was made, muſt be expreſsly alledged and *exactly* proved. ſ. 25 (N) 2
40 Where uſury is pleaded in bar to a bond, the trial ſhall be where the uſury is alledged. ſ. 26
41 The party who hath agreed to pay money upon an uſurious contract is not an admiſſible evidence, unleſs he have paid off the whole debt. ſ. 27
42 But he is a good witneſs to prove the repayment of the money borrowed. *ibid.* N)
43 And the borrower may be a witneſs, though the money is not repaid, if the uſury neither affects the debt, or avoids the contract. *ibid.*
44 And where the matter is doubtful the objection ſhall only go to the credit, and not to the competency. *ibid.*
45 If the borrower of money, upon an uſurious contract, bring an action of trover for goods pledged as a ſecurity for the repayment of the principal, the parties are conſidered *in pari delicto*, and the plaintiff ſhall be nonſuited. 533 (N)
46 The princip l money may never be paid, and yet the uſury may be committed. 362
47 An information for uſury on a loan *of money*, cannot be ſupported by evidence of uſury concerning *wares ſold*. 534 ſ. 28
48 What may be pleaded in uſury. *ibid.* (N)
49 What may be anſwered to a bill of diſcovery. *Page*
50 By 3 Geo. 1. c. 8. the bank of England may borrow money at more than 5 *per cent. per annum.* ſ. 29
51 By 14 Geo. 3. c. 70. monies lent on *Weſt India* eſtates may be at 6 *per cent. per annum.* ſ. 30
52 If a bill of exchange drawn on account of an uſurious contract be exchanged for a bond, and an action be brought on ſuch bond, to which the defendant pleads uſury, no indorſer of the bill of exchange is a competent witneſs to prove the uſury—Sutton v. Shelly, Term Rep. 296

UTTERING—*Vide Coin.* No. 6, 33, 38, 39, 40, 44.

W

WAGGONS.—*Vide Highways. Turnpike Roads.*

WAGGONER.

1 NOT permitted to travel on a Sunday. 11

WAIFS.

1 To take *waifs* or *ſtray*, before they have been *ſeized*, &c. is not felony by the common law. 144

WAIVER.

1 If the king ſeize a recuſant's lands, it is a *waiver* of his power to ſeize the goods. 22

WALES.

1 By 26 Hen. 8. c. 6. a murder in Wales may, *on indictment*, be tried in the adjoining Engliſh county. *P.* 121.

2 Which ſhall be conſidered as the next adjoining Engliſh county. 220, 221.

WALLS.—*Vide Burglary. Nuiſance.*

WAR.—*Soldiers. Piracy.*

A previous denunciation of war, not neceſſary to make adherence to the king's enemies, high treaſon. 55

(N) 6

WARRANT.

1 Killing an officer whoſe warrant gives him no authority to make *the arreſt*, is only man-ſlaughter. 130

2 So alſo where a good warrant is executed in an unlawful manner. *ib.*

3 In what caſes homicide by an officer endeavouring to execute a warrant is juſtifiable. 106, 107

4 How a warrant for ſurety of the peace is to be executed. 255, 256

5 In what caſes a warrant is neceſſary to arreſt an *affrayer*. 269

WARRANTY.—*Vide Maintenance.*

WARREN.—*Vide Deer. Black Act. Hunters.*

WATCH.

1 The inhabitants are not bound to keep watch in a new way, or make amends for a robbery therein, or to repair it, unleſs licence be firſt obtained upon *ad quod damnum*. 367

WATER COURSE.—*Vide Highways*

WATERMEN.—*Vide Lord's Day. Boats.*

WAY.—*Vide Highways.*

WEAPON.—*Vide Affray, No.* 14, 29. *Arms. Aſſault, No.* 2. *Attempt to Rob. Smugglers. Man-ſlaughter. Riot.*

WEAVER.

1 A weaver who has *received* ſilk to work may be guilty of larceny by taking it felonioufly away. *Page* 135

WESTMINSTER HALL.—*Vide Contempts.*

WIFE.—*Vide Huſband. Coverture.*

WITCHCRAFT.

1 Conjurers, witches, and ſorcerers diſtinguiſhed and deſcribed. 8

2 They were anciently puniſhed as *heretics*, by the writ *de hæretico comburendo*, &c. *ibid*

3 In the reign of Ed. 3. a *ſorcerer* was permitted to excuſe himſelf by ſwearing that he would no longer be a ſorcerer. *ibid*

4 The offenders divided into four kinds by 1 Jac. 1. c. 12. *ibid*

5 The puniſhment inflicted by that act. 9

6 By 9 Geo. 2. c 5. no proceedings ſhall be had againſt any perſon for witchcraft, ſorcery, inchantment, or conjuration, &c. *ibid*

7 Whoever ſhall pretend to exerciſe theſe arts, or to diſcover ſtolen goods,

goods ſhould be impriſoned for one year, ſtand four times in the pillory, and find ſureties. *Page* 9

8 By 17 Geo. 1. c. 5. all jugglers, fortune-tellers, and dealers in crafty *occult* ſcience, ſhall be deemed rogues and vagabonds. *ibid.*

WITNESS.—*Vide Perjury. Uſury, No.* 41, 42, 43, 44, 51. *Contempts, No.* 23, 36.

1 In conſpiracy, it is no excuſe for a defendant to ſay that he was only examined as a witneſs on the trial, 349.

2 Whether a popiſh recuſants convict, are diſabled from being witneſſes, 33

WOOL.—*Vide Exportation.*

1 By ſome old ſtatutes the tranſportation of it made felony. 195 c. 52

2 By 8 Eliz. c. 3. no rams, ſheep, or lambs ſhall be exported on pain of *qui tam*, forfeiture of goods, &c. *ibid.* ſ. 2.

3 By 12 Car. 2. c. 32. a further penalty is inflicted for exporting ſheep or wool. *ibid.* ſ. 3

4 By 7 & 8 Will. 3. c. 28. puniſhment inflicted on aiders and aſſiſters. 196

5 By 4 Geo. 1. c. 11. the exporters of wool, and their aiders, &c. refuſing to appear to an information may be tranſported. *ibid.* ſ. 5

6 By 12 Geo. 2. c. 21. to bribe an officer to connive at the exportation of wool, forfeits 300*l.* and to reſiſt an officer preventing the exportation, is felony. *ibid.* ſ. 6

7 By 19 Geo. 2. c. 30. three perſons aſſembled, armed and diſguiſed, to aſſiſt at the unlawful exportation of wool, is felony without clergy. 197.

WOOD.

1 Conſtables may ſearch the houſes of ſuſpected wood ſtealers. 214. ſ. 1

WOOLCOMBERS.

1 Aſſaulting a maſter woolcomber, tranſportation ſeven years. *Page* 239 app. 10

2 By 22 Geo. 2. c. 27. this penalty extended to other trades, and the proſecution confined to three months. *ibid.*

WORDS.

1 Words *written* in a ſermon have, by a ſtrained and ſevere conſtruction, been held an overt act of high treaſon. 56

2 The *great queſtion* examined, whether words only ſpoken, can amount to an overt act of compaſſing the king's death. 57 to 61

3 How far reproachful words to a judge may amount to a high miſpriſion. 88 to 90

4 How far words againſt the king amount to a contempt of his perſon and government. 92, 93

5 No affront by bare words, &c. however falſe, malicious, or aggravated, can amount to ſuch a provocation as will alleviate homicide, from murder to manſlaughter. 124

6 No one ought to be bound to good behaviour for any raſh, quarrelſome, or unmannerly words, unleſs they tend to break the peace, or to calumniate the ſtate, &c. 261

7 But a recognizance of the peace may be forfeited even by words *directly* tending to a breach of the peace, 258

8 No quarrelſome or threatning words ſhall amount to an affray, &c. 263

9 But a juſtice may bind to the peace thoſe who contend together with *hot words*, &c. (*ſed vide* 269). 253, 254.

10 How far words ſhall be ſaid to inſpire ſuch a degree of terror as is neceſſary in forcible entry. 281

11 Threatening ſpeeches *in terrorem populi* may amount to a riot. 295

12 How words muſt be expreſſed and underſtood to make a writing libellous. *Page* 353

WOUND.

1 In what caſes the wounding another may be juſtified or excuſed. 259 260, 268, 301

WRECK.—*Vide Wharf. Ships and Shipwreck.*

WRITINGS.

1 Writings cannot, by the common law, be the ſubject *of larceny.* *Page* 142

2 But by 2 Geo. 2. c. 25. to ſteal the writings therein enumerated is felony of like nature as ſtealing the property, they are calculated to ſecure, &c. *ibid.*

END OF THE FIRST VOLUME.

BRITISH MUSEUM
27 JUN 8